

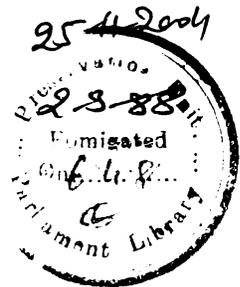
Friday, 27th September, 1929

THE
COUNCIL OF STATE DEBATES

VOLUME II, 1929

(16th September to 28th September 1929)

SEVENTH SESSION
OF THE
SECOND COUNCIL OF STATE, 1929



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1929

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COUNCIL OF STATE.

Friday, 27th September, 1929.

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

QUESTIONS AND ANSWERS.

THE TECHNICAL SCHOOL AT JAMALPUR.

85. THE HONOURABLE MR. SHAH MUHAMMAD ZUBAIR : Will Government be pleased to state :

- (a) the date from which the Technical School at Jamalpur was started,
- (b) the number of teaching staff in the school with the salary attached to each post and the date of the appointment of each teacher,
- (c) the daily average number of boys attending the school,
- (d) the actual amount spent in the said school during the year 1928-29 and the amount budgeted for the current year.

THE HONOURABLE MR. J. A. WOODHEAD : Information has been called for from the Agent and will be communicated to the Honourable Member in due course.

METHOD OF SELECTION OF APPRENTICES FOR THE TECHNICAL SCHOOL AT JAMALPUR.

86. THE HONOURABLE MR. SHAH MUHAMMAD ZUBAIR : Will Government be pleased to state :

- (a) The method of selecting the first, third and special class apprentices for the Jamalpur Technical School.
- (b) Do the Government propose to appoint a committee consisting of officials and non-officials for the selection of these apprentices ?
- (c) Whether there is any committee to manage the affairs of the said school ?
 - (1) If so, how many members are there in the committee and who are the members ?
 - (2) Is there any non-official in that committee, if so, who and how many ?
 - (3) Are the Government contemplating the inclusion of non-officials in the committee if there is none at present ?
 - (4) What is the function of that committee and how many times during the year does this committee meet ?

THE HONOURABLE MR. J. A. WOODHEAD : Information has been called for from the Agent, East Indian Railway, and the Honourable Member will be communicated with on receipt.

TOWN INSPECTORS OF POST OFFICES.

87. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Will Government be pleased to state :

- (a) whether the postal Town Inspectors were omitted in the general revision of 1920 when the pay of all classes of postal employees was revised ?
- (b) whether a time scale of pay was introduced in September, 1920 ?
- (c) whether, with the introduction of the time scale of pay, the officials who were appointed in the Town Inspectors' posts were removed from their permanent posts and a fresh batch of clerks replaced the Town Inspectors ?
- (d) if the reply to the foregoing be in the affirmative, will Government be pleased to state whether the officials who were appointed to the posts of Town Inspectors continued to perform the higher duties prescribed during the graded scale, *i.e.*, prior to September, 1920 ?
- (e) whether various other important duties, such as those connected with franking machines and inspection of selection grade offices in many Head Offices were imposed on these selected and permanent Town Inspectors as also the duties imposed on them by the Presidency Postmasters or the Postmaster General under the authority vested in them (*vide* "N. B." above Rule 345 of P. O. Manual, Volume 2, Chapter 4) ?

THE HONOURABLE MR. T. RYAN : (a) No.

(b) Yes.

(c), (d) and (e). Government have no information, nor do they propose to collect it as they fail to see its public utility.

DUTIES OF CLERKS AND TOWN INSPECTORS OF POST OFFICES.

88. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Will Government be pleased to state :

- (a) whether in accordance with the Fundamental Rule any two posts are said to be equal if the duties attached to them are equal or approximately of the same character or degree of responsibility ?
- (b) are the duties attached to the posts of clerks of the same responsible nature as those of postal Town Inspectors of the first class Head Offices ?

If the reply to (b) is in the negative, will Government be pleased to state how seniority in the clerical line can be compared with seniority in a different line ?

THE HONOURABLE MR. T. RYAN : (a) No.

(b) Generally speaking the duties of the Town Inspectors referred to are of a more responsible nature than of clerks on ordinary time scale rates of pay,

In regard to the last part of the question, so long as the Town Inspectors were for purposes of pay graded with clerks on ordinary time scale rates of pay, there was no difficulty in comparing their relative seniority.

LIEN IN RESPECT OF GOVERNMENT QUARTERS AT DELHI.

89. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :

(a) Are some officers of Government granted a lien in respect of Government quarters at Delhi and some not ?

(b) If so, who are so entitled and who are not, and what are the reasons for such distinction ?

(c) Do Government contemplate providing quarters for all officers, or removing the distinction between them as regards lien on quarters ?

(d) If such distinctions are going to be removed, what will be the principle according to which allotments of quarters will be made ?

THE HONOURABLE MR. T. RYAN : (a) Yes.

(b) The officer who having been allotted the quarter for the previous winter season was in occupation thereof prior to 1st January and who remains or becomes eligible for it has a lien on the quarter, provided he did not surrender it in the preceding winter season. An officer who does not satisfy these criteria is not entitled to hold a lien. The reason for the distinction is that an officer should be in occupation of a quarter for the major portion of the season before he can establish a lien.

(c) and (d). The position generally is under review.

SHORT NOTICE QUESTION AND ANSWER.

GRANT OF CONVEYANCE ALLOWANCE TO CLERKS NOT PROVIDED WITH GOVERNMENT QUARTERS IN NEW DELHI.

THE HONOURABLE MR. NARAYAN PRASAD ASTHANA : (1) With reference to the Honourable Mr. Mahendra Prasad's questions Nos. 138 and 139 in the Council of State on the 21st September, 1928, will Government please state :

(a) whether they have re-examined the question regarding the grant of conveyance allowance to those clerks of the Government of India who have not been provided with Government quarters in New Delhi and who are compelled to live far off from the Secretariat buildings for want of sufficient accommodation in New Delhi. If so, at what conclusions have the Government arrived ?

(b) the reason why conveyance allowance is allowed only to such clerks who live in the Notified Area and not to those who live far off from the Secretariat buildings ?

2. Will Government consider the desirability of fixing any limit of mileage for the purpose of granting conveyance allowance ? If not, why not ?

THE HONOURABLE MR. C. W. GWYNNE : 1. (a) Yes. It has been decided not to entertain any proposals which have the effect of extending the allowance, but to abolish it as soon as it is possible to do so.

(b) No conveyance allowance is ordinarily admissible to Government servants for attending office. The reason that an allowance is allowed to clerks living in Old Delhi is, as was explained on the 21st September, 1928, historical, and arises from the time when the Government of India offices were in Old Delhi and certain clerks were living out in Raisina.

2. No, for the reasons already stated.

STATEMENT LAID ON THE TABLE.

PROPOSED AIR SERVICE FROM KARACHI TO DELHI.

THE HONOURABLE MR. T. RYAN (Industries and Labour Secretary) : Sir, as promised on the 16th September, 1929, in reply to a question of my Honourable friend Kumar Sankar Ray Chaudhury, I lay on the table a statement regarding the proposed air service from Karachi to Delhi with future extensions.

Statement placed on the Table of the Council of State on the 27th September, 1929, regarding the proposed Trans-India Air Service.

I place the following statement on the table to fulfil the promise which I made on the 16th of this month in reply to a question asked by my Honourable friend Mr. Kumar Sankar Ray Chaudhury on the subject of the proposed air service from Karachi to Delhi with future extensions.

The revised proposals of the Government of India in regard to the air service between Karachi and Delhi and their present ideas in regard to the extension of the service from Delhi to Calcutta and ultimately to Rangoon were placed before, and explained fully to, the Standing Finance Committee of the Legislative Assembly at its meeting on the 20th September, 1929; and full details on the subject will be found in the published proceedings of that Committee for that date. That being the position, it is not necessary for me to record a lengthy statement on the subject repeating for this purpose the information placed before the Standing Finance Committee and summarised in their proceedings. Government will now proceed with the particular proposal which has been approved by the Standing Finance Committee for the establishment of a Karachi-Delhi service.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

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

“ I am directed to inform you that the Legislative Assembly have, at their meeting held on the 26th September, 1929, agreed, without any amendments; to the following Bills which were passed by the Council of State at their meeting held on the 18th September, 1929 :

- A Bill further to amend the Indian Territorial Force Act, 1920, for a certain purpose.
- A Bill further to amend the Indian Cotton Cess Act, 1923, for certain purposes.
- A Bill further to amend the Indian Registration Act, 1908, for a certain purpose.
- A Bill further to amend the Burma Salt Act, 1917, for certain purposes.
- A Bill further to amend the Guardians and Wards Act, 1890, for a certain purpose.
- A Bill further to amend the Indian Succession Act, 1925, for certain purposes.”

CHILD MARRIAGE RESTRAINT BILL.

THE HONOURABLE THE PRESIDENT : The Honourable Mr. Ramadas Pantulu.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : I rise to a point of order, Sir, and it is this. The Bill, as originally introduced, was a purely Hindu Bill, concerning Hindus only, and it was a civil Bill. During the Select Committee stage it was amended into a criminal Bill embracing Muhammadans and other classes of non-Hindus. Under section 67(2) (b) of the Government of India Act it is provided :

“ It shall not be lawful without the previous sanction of the Governor General to introduce at any meeting of either chamber of the Indian Legislature any measure affecting the religion or the religious rites and usages of any class of British subjects in India.”

There was previous sanction given when the Bill was originally introduced and it affected Hindus only. After it was amended, and drastically amended, to include Muhammadans and other classes no previous sanction was given to re-introduce, and I submit this Bill affects the religious rites of Muhammadans. For some reason or another it is considered that marriage is not a religious rite among Mussalmans, but it certainly is so. I submit that since there was no previous sanction of the Governor General as contemplated by section 67 (2) (d), I think this Bill cannot be proceeded with.

THE HONOURABLE MR. L. GRAHAM (Secretary, Legislative Department) : Sir, I think the Honourable Member who has taken this objection has very kindly furnished me with the answer to it when he said that no previous sanction was taken to re-introduce the Bill, because there has been no re-introduction of the Bill. One Bill was introduced, Sir, with the sanction of the Governor General. That Bill I hold in my hands with the endorsement printed on the back. The provisions of the section are that “ it shall not be lawful without the previous sanction of the Governor General to introduce at any meeting.....

THE HONOURABLE MR. P. C. DESIKA CHARI : Of either Chamber of the Legislature.

THE HONOURABLE MR. L. GRAHAM : Are we introducing the Bill here ? We are not introducing the Bill. A motion is going to be made to take the Bill into consideration. My point is that the Bill has been introduced with the sanction of the Governor General. The Bill has grown in exercise of the powers vested in the lower House ; they have examined the Bill ; they have extended the provisions. But there is only one Bill, and the Bill now before us is the Bill that was introduced in the lower House with the previous sanction of the Governor General. The point which my Honourable friend has taken was, as a matter of fact, taken in the other House. I am sorry, Sir, I have not had the proceedings marked, but had my Honourable friend given notice of the point, I should have done so. But I am assured by persons who were present in the other House when the point was taken that the ruling which was given is the ruling which I would ask you too, Sir, to give, and that is, that there is only one Bill and that Bill was introduced with due sanction and the sanction carries on.

THE HONOURABLE THE PRESIDENT : It appears to be common ground that the Bill which is now before the House—I understand that the Bill did not lapse at any time, it has continued alive since its introduction—that that Bill received the sanction of the Governor General under section 67(2) of the Government of India Act. I cannot conceive that the intention of section 67(2) was that once a Bill had been sanctioned, every further amendment of it should require a fresh sanction of the Governor General. It is equally clear that, when a Bill has been introduced in one House with sanction, no further sanction is required for further stages of the Bill in the other House. I am not inclined to hold that there is any force in the point of order raised by the Honourable Member. It appears to me that, though the scope of the Bill has been enlarged, as he says, the sanction originally given covers the Bill. If indeed sanction is required for the Bill at this stage, it is covered by the sanction originally given.

The Honourable Mr. Ramadas Pantulu.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE (West Bengal : Non-Muhammadan) : Before the Honourable Member proceeds with the Bill, may I point out the other provision in the Government of India Act where it is provided that, if any question arises whether a Bill is or is not a Bill which requires sanction under the Act, the question shall be referred to the Governor General and his decision on the question shall be final.

THE HONOURABLE THE PRESIDENT : I do not think the question which the Honourable Member raises does actually arise at this stage. It is not a question whether this Bill requires sanction for its introduction. There is no case of introduction of a Bill now in this House ; there is no question as to whether the Bill requires sanction or not ; for its introduction in another place sanction was given and that sanction is still, I think, covering the Bill, which has already been introduced.

The Honourable Mr. Ramadas Pantalu.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan) : Sir, I beg to move that the Bill to restrain the solemnisation of child marriages, as passed by the Legislative Assembly, be taken into consideration.

In speaking on this motion, I shall adhere to the promise I gave to this House the other day not to be long, because Honourable Members are full of the subject. The history of this legislation is a very old one. The problem of the infant wife and the child mother is indeed a very old one in India. The custom or the Shastras whatever it is, has been in force for very many centuries. I find that, during the enquiry of the Age of Consent Committee, an attempt was made by some witnesses to prove that child marriages had their origin in the supposed aggression of Mussalmans on Hindu homes. I repudiate this charge as utterly unfounded. Child marriages had been in existence in India for a very long time before the Mussalmans came to this country. Therefore, its history is an ancient one. Similarly, Sir, the attempt to undo the mischief of this custom is also an old one. Even before the Mussalmans came to this country, attempts were made by various law-givers to explain away the ancient texts and to reduce the rigour of the old law, so as to free the people from the tyranny of this custom. Therefore, neither the custom nor the attempt to get rid of it is a recent one. So long ago as 1891,

when the question of the age of consent was raised in connection with the Indian Penal Code, the question of the marriage law was incidentally raised ; and at that time, Lord Lansdowne laid down the principles on which the British Government would deal with such problems. I think His Lordship's statement was a wise and statesmanlike one, and I think that that principle has not now been departed from, though the Government of India has been a little over-cautious in recent times in lending their support to legislation of a social character. In the year 1914, Mr. Srinivasa Sastri (now the Right Honourable V. S. Srinivasa Sastri) introduced into the Madras Legislative Council a measure to validate post-puberty marriages. That Bill was abandoned, not so much because there was opposition to post-puberty marriages, but because the enlightened section of the community felt that it was an insult to them that a Bill of that sort should ever be introduced. They had been celebrating post-puberty marriages for some years, and they considered that a Bill of that sort would throw some doubt on their validity and lead to the inference that the Shastras prohibited it. They held the view that the Shastras did not prohibit them, that the custom was not transcendent, and consequently the measure was unnecessary ; therefore he dropped it. Since then, the Indian Penal Code was amended to raise the age of consent, and the question of marriage was again incidentally raised. This Bill, which was introduced by Mr. Harbilas Sarda in 1927, has at last passed through the Legislative Assembly after being before the Select Committee twice and after being before the public for over two years and undergoing drastic modifications. In this connection, Sir, I shall be wanting in gratitude and propriety if I do not tender my heartfelt thanks to the Government of India for the very handsome support they have given to this Bill. I am glad to find my esteemed friend, Sir James Crerar, with whom I crossed swords many a time in this House, when he was a Member of this House, is here again to give his support to-day. I read his speech in the Legislative Assembly, and he made it very clear that the Government of India did not stand in the way of progressive social legislation and that the Government of India considered that the evil to be remedied in the case was a serious one and that public opinion reasonably favoured it. Therefore, Sir, with the help of the progressive section of the community and with the help of the Government of India, the Bill is now on its way to the Statute-book—not exactly on the Statute-book yet.

In commending this measure for the consideration of this House, I shall at once concede that the Bill is a very drastic one, because it curtails the freedom which the people of this country—large communities like Hindus and Mussalmans—enjoyed for centuries. I am quite alive to that fact. I also concede that it trenches on matters social and domestic which also involve socio-religious customs followed by large communities. I also concede, Sir, that it touches very delicate chords of personal and intimate human relations. I also concede that it offends against the cherished sentiments of important sections of both the Hindu and Muhammadan communities. And I also concede that it involves very difficult and intricate questions on which much may be said by either side, both from the academic point of view and from the practical point of view. Having said all this, however, the justification for my standing up here to support a measure of this nature rests on the question of balance of advantages over disadvantages. If child marriages are a corroding evil, if infant wifhood and child motherhood are detrimental to the best

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interests of the nation and national progress requires that we should arrest the evils of this custom, then we must undo the mischief of it. Having given my most serious consideration to this question and having come to the conclusion that the advantages far outweigh the disadvantages, I have made bold to support this measure.

It is usual for the Mover of a motion like this to answer some of the objections to the consideration of the measure. The opponents of the Bill may be classed under two heads. First, there are those who believe that child marriages are not an evil at all, and therefore no steps are necessary in any direction to remedy any evil. With them I certainly cannot have any argument. With those who honestly believe that it is not an evil and India does not suffer by the custom or practice of child marriage, it is not possible to argue. Therefore, I shall leave them alone. But I am convinced that a large majority of people in this country, who are able to think and who are able to judge, undoubtedly feel that the evil is a corroding one, one of great magnitude which requires remedy. To them I can address a few arguments.

One of the most serious objections raised against this Bill is that, while the evil exists, the way to deal with it is by propaganda and other means available to the community and not by legislative interference. That, I find, seems to be the chief standpoint of those who are inclined to agree that the evil exists and should be remedied. They say that in matters, religious and social, legislative interference is not only undesirable but is to be deprecated. On this matter, Sir, I may at once point out that the answer is furnished by the provision of law which has already been quoted in deciding the point of order raised by my friend, the Honourable Mr. Chari and which existed from the earliest Acts regulating the governance of India. Section 67 (2) and its counterparts in the old Acts stood identically the same. Not only did the Government of India Act not prohibit but in express terms contemplated the introduction of measures affecting religion or religious rites with the previous sanction of the Governor General. That clearly indicates that in some instances at any rate, where discrimination may be beneficially exercised by the Governor General, matters affecting religion and religious rites, where the objections are not really insuperable, can be legislated upon if the measure receives popular assent and legislative support. Therefore, that the measure is clearly *intra vires* there could be no possible doubt, under the provisions of the Government of India Act. If the discrimination and discretion allowed by section 67 (2) are not to be exercised in cases of corroding social evils like the one under question, I do not know when that section can be put into operation and for what beneficial purpose. I feel that this is a purpose for which the section has been rightly used.

Then, Sir, it is said that the Legislatures, assuming that they have the power, as at present constituted, are not the proper bodies to deal with such questions. I must demur to this allegation. The elected Members of the Central Legislature have always claimed in matters affecting political and other questions that they are voicing the feelings and the sentiments of the people of this country, and for every success of the popular vote in the other House and this House we have been claiming the credit of vindicating the

popular view. If that claim to voice the popular sentiments in all other matters is justified, I cannot understand why, in a matter like this, it should be said that the elected representatives of the Central Legislature do not represent the people and do not voice the feelings of the people. I do not see why such an attitude should be taken up now and what justification there is for it. If we represent the people for the national good in the Legislature, we do so in all matters. The other objection is that the Legislatures are bodies composed of various communities, and that legislation affecting certain communities should be undertaken only with the concurrence of the particular community affected by it and not by mixed Legislatures. So far, Sir, as I can see, the Legislature in India is bound to be a mixed Legislature, because India is inhabited by many communities who have come to settle here for good, and it is not possible to have a Legislature composed of Hindus only or Muhammadans only or Christians only or Buddhists only, and to say that on every measure that comes before them relating to social or religious rights, we must have only a Hindu or Muhammadan or Christian or Buddhist vote is the very negation of popular government in this country. If, therefore, there is no chance at any future time of having Legislatures so constituted in which a communal vote can be taken on communal measures, and the Legislatures will continue to be constituted as they are at present on a mixed basis, I find that the objection to the proposed legislation by the Central Legislature is not a *bona fide* objection. Then, Sir, this is not the first time that the Indian Legislature has exercised a power of this sort. On previous occasions it has intervened in matters involving socio-religious customs and had recourse to very drastic legislation. The prevention of *Sati* is one such instance. It was distinctly a religious custom. That legislation was undertaken in the interests of Hindus on humane considerations....

THE HONOURABLE MR. MAHMOOD SUHRAWARDY (West Bengal : Muhammadan) : *Sati* was not religious : it was social.

THE HONOURABLE MR. V. RAMADAS PANTULU : It was socio-religious. At any rate the woman who committed *Sati* was considered to go to heaven and get religious merit. Heaven is certainly not an irreligious institution ; therefore *Sati* was a religious custom.

THE HONOURABLE MR. P. DESIKA CHARI : Question ?

THE HONOURABLE MR. V. RAMADAS PANTULU : And you are aware that other legislation was similarly undertaken in the interests of social justice. When it was enacted that widows could remarry and under certain conditions retain their properties and other rights under the Hindu law except in particular cases, we certainly made a very serious inroad into Hindu law. And in 1860, when you enacted a law that a member of a joint Hindu family could become a convert to Christianity or any other religion and still retain the rights of inheritance, you made a serious inroad into Hindu law.

Everybody knows that the right to inherit property is based, whether under the Dayabhaga or Mitakshara system, upon the ability of the heir to offer *pindas* and oblations of water to the ancestors, and his rights are inextricably mixed up with his religious propinquities. You have in the past made such legislative inroads as to say that a Hindu who becomes a Christian or a

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Muhammadan will nevertheless retain his properties and inherit the properties just as if he continued to be a member of his Hindu family. Then, Sir, in 1872, the Legislature said that a Hindu can give up his religion for a minute, marry a woman of another religion under the Civil Marriage Act and then come back to Hinduism if he likes to do so afterwards. That is a very serious inroad, I submit, into the Hindu socio-religious customs. Again, Sir, it was only last year that the Legislature passed two measures affecting the Hindu law with regard to inheritance. These, I claim, are measures which make very serious inroads into the Hindu religion. For the first time you have given to females like the daughter's daughter, sister and others, who never conferred religious benefit to the deceased and who were purposely excluded by texts on the ground that they conferred no religious benefit, from the right of inheritance; and you have brought them into the line of heirs. You have thus made a very serious inroad into the Hindu law. I can multiply instances if I am asked to give an exhaustive catalogue, but I think, Sir, I have said enough to show that this cry of "religion in danger" and of the incapacity of the Legislature to interfere in social or socio-religious matters is a cry which is raised on all those occasions, without substance and with no effect. The Legislature has interfered either in the interests of humanity, that is on humane considerations, or to promote social justice. This measure is one of that kind.

My Mussalman friends who are objecting to this measure on religious ground will, I hope, kindly turn to the provisions of the marriage laws recently enacted by the Governments of Egypt and Turkey which are printed as Appendices to the Age of Consent Committee's Report.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY : They have got a national Government.

THE HONOURABLE MR. V. RAMADAS PANTULU : So, the objection that the Koran prohibits the passing of such a measure cannot be upheld in the face of the fact that two Mussalman Governments have enacted laws which are more serious and more drastic than the Bill under consideration. For the first time, my Mussalman friends object to a foreign Government intervening in their affairs. But they have had so many benefits from the foreign Government and they want so many hereafter, that I do not see why that foreign Government to whom they look for various things should be discarded when it comes to the rescue of the people to remove a great social evil of a nation of wide magnitude.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY : The analogy does not hold good in the case of the two countries which are altogether different, considering the fact that Turkey is a united nation and Egypt an independent country, while in India there is a diversity of peoples.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province : Nominated Non-Official) : The Muhammadan votes should count, not yours.

THE HONOURABLE MR. V. RAMADAS PANTULU : The objection to the foreign Government forcing this legislation disappears in this case, if you look at the votes recorded in the other place. I know that the votes of the Government cast on this Bill are so few compared with the large majority of votes cast by the non-officials.....

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): Elected Members.

THE HONOURABLE MR. V. RAMADAS PANTULU: Yes, by the elected Members, even eliminating the nominated Members; the Government have not turned the scale in actual voting in the matter, though I agree that the moral support given by them went a long way in making the Bill a success.

THE HONOURABLE MR. P. C. DESIKA CHARI: You will not be able to say so in this House.

THE HONOURABLE MR. V. RAMADAS PANTULU: Then, Sir, with regard to the Legislatures not being the proper bodies, may I ask my friends who oppose the Bill what other agency they can point out? The members of the orthodox deputation who came here, for whom I have the highest respect,—I myself am an orthodox man—they all came as representatives of the various Matadhipathies and religious heads. It is so far the proper thing to do for Matadhipathies. They are the people who ought to take an interest in such matters. But may I ask in all humility whether these religious heads have ever before shown any concern in eradicating social evils, in tackling problems affecting social good? They have never taken any care to set right any evil in the social life of India. When a measure of this sort is on the legislative anvil, it is only then that we hear of these religious heads. Therefore, it is useless to look to these religious heads to set right social evils in these days. Therefore, that agency clearly fails, and I do not see what other agency there is to come to our rescue. Therefore, Sir, I think that the objection that the matter is not one for legislative interference has no substance in it.

The only other objection—of course many objections are raised, but I am only dealing mainly with two—the only other chief objection urged is that the measure is likely to destroy the moral instincts of the girls of this country and that it introduces into Hindu homes an evil which is a new danger, and the measure therefore is fraught with serious consequences on that ground. I have not the slightest hesitation in saying that those who make this charge are speaking without facts and figures. They forget that even now, in India, a little over 50 per cent. of the girls are married above the age of 15. If these 50 per cent. of the girls in India can be chaste, if their morals are not corrupted, and if they can be true Hindu wives and true Mussalman wives, I fail to see how the other 50 per cent., who are now married at a lower age, could be said to be in peril of their chastity being endangered. It is an argument which has no basis for it. In my province, Sir, the position is very favourable to me. You may be surprised to hear that in my province from which most of the trouble comes

THE HONOURABLE MR. G. A. NATESAN: You mean the opposition?

THE HONOURABLE MR. V. RAMADAS PANTULU: Yes. The orthodox opposition is more vociferous there. And it is the province in which the child marriage custom is the least rampant in India, except perhaps in the Punjab and the North West Frontier Province. I take pride in that fact. If you take the girls between the ages of 10 and 15, out of every 100 such girls, only 24 are married below 15 in my province. The other 76 girls between the ages of 10 and 15 are married after they are 15. If the 76 girls out of every 100 in the

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Madras Presidency who are married after 15 are not in danger of their morals being corrupted, I do not see why the 24 girls whom we want to rescue from the custom should be in danger of their morals being endangered. The argument would, to my mind, be nothing less than a libel upon the Hindu homes and upon the chastity of the large class of women who have lived in India for ages under the custom of post-puberty marriages. Sir, the position with regard to the various provinces stands thus. According to the Census of 1921, 24½ per cent. of Hindu girls between 10 and 15 were married in Madras—the proportion here is very favourable—64 per cent. in Bombay, 62·4 per cent. in Bengal, 59·6 per cent. in the Central Provinces and Berar, 53½ per cent. in the United Provinces, 52¾ per cent. in Bihar and Orissa, 35·5 per cent. in the Punjab. Assam shows a percentage of 27, and the North West Frontier Province is the only province which shows a lower percentage of 19. Therefore, taking the average, we find that little more than 50 per cent. are married between the ages of 10 and 15. Therefore, the argument that morality is in danger is without any foundation. Those who seek to make much of this argument forget that the economic, social and educational conditions of the country have so vastly changed since the Shastras were written, that the considerations which weighed with the people at that time no longer have weight. If our girls are to be brought up to the standard of women in all civilized countries, if they are to take advantage of the new currents of life which India offers to them, their marriage age should be raised; it is absurd to argue that, unless they are married before 14, the heavens will fall or that the whole fabric of Hindu society will fall to pieces. It is not a fact. I know as a matter of fact that many orthodox Brahmins in Madras who are ranged on the opposition side are, as a matter of fact, resorting to post-puberty marriages without publicly owning it. And, when this Bill is passed, it will be welcomed as a protective measure by which many people desire to benefit; and they constitute large sections who are now suffering under the tyranny of a social custom which they are unable to overcome. They will consider this to be the new legislation binding on them like the Shastras. In the old days, Sir, it is wrong to say that the Hindu law was wooden and inelastic. Anybody who reads the Shastras or their translations will find that the various stages of Hindu civilization were merely treated as periods of evolution, and from time to time the Dharma was revised and definite machinery was devised of Dharmagnas to revise the laws when they became antiquated or unsuitable and new laws were required. Nowadays we have no Dharmagnas who can do this work. Not one of the gentlemen who came from Madras or Bengal ever assumed the functions of a Social law-giver or ever tried to lay down a new Dharma for the remedy of social evils. The only agency we have to revise antiquated laws and to make new the Dharma are the modern Legislatures, and we are all Dharmagnas. When the Maharaja of Darbhanga last year—alas he is no more and we miss him badly—raised the same objection to the Hindu Inheritance Bills of 1928, I said that we, the representatives of the people, claim to be Dharma revisers. We have the same right as the ancient law-givers and Dharmagnas had to change the laws from time to time, and I claim that there is no other agency for doing that work. And in the other place, Sir, my friend Mr. Jayakar gave a crushing reply to those who said that ancient

law was absolutely unchangeable and that the Hindu Shastras could not be touched. He quoted a very authoritative text which runs in these words :

“ Only that text of the Vedas is to be accepted as of greater authority than the evidence of our senses and experience, which accords with our notions of logic and rationality ; not every text of the Vedas.”

And with regard to the Shastras he quoted the authority of one of the greatest of Commentators, Bhamati, who is one of the greatest annotators of the Vedanta Sutras. Bhamati says :

“ The Shastras are like jackals and their howls are silenced when the lion of the Vedanta roars.”

Reason and rationality were the guiding principles of the *Uttera Mimamsa* or Vedanta and that was the view taken by that great ancient lawyer of this country. Therefore, I claim that this House has every right to change the ancient law if it is not in consonance with modern requirements, modern progress and the exigencies of present life.

I do not wish, Sir, to say more at this stage. To the Age of Consent Committee I think our thanks are due for the very careful, for the very fair and informing report they have written in most excellent language which is not offensive even to the most orthodox people. That report has shown that the physiological, eugenic, social, economic and educational conditions of the country require that the custom should be changed. Under those five heads they have given, what to my mind at least are conclusive and unanswerable, arguments in favour of the change. Therefore, the choice before this House is the choice between stagnation and progress, between the deterioration of the nation's manhood and womanhood and healthy national development. Which will you choose ? I have no doubt at all that you will choose the path of national progress and national development, and I hope you will not be swayed by sentiment or false cries of “ religion in danger ” and vote against the measure. I commend this measure to the acceptance of this House, and I hope it will be taken into consideration. (Applause.)

THE HONOURABLE MR. P. C. DESIKA CHARI : Sir, I move :

“ That the consideration of the Bill be postponed till the Delhi Session of the Council of State to be held in 1930.”

In moving that amendment let me not be misunderstood as being anxious to obstruct or delay the progress of the Bill. (Laughter.) I shall explain the object presently. The other day my friend the Honourable Mr. Rama Prasad Mookerjee pointed out that it is our fate to get at the fag-end of the Session a very important measure requiring serious consideration. We have before us to-day a Bill which very seriously interferes with the age-long customs and usages of the people of India. We have a penal measure threatening people who disobey that law with very serious consequences. A measure which has taken such a long time and which has required such serious deliberation in the other House ought not to be brought here and practically rushed through at very short notice. I admit that the Bill has been laid on the table for three days prior to its being brought on to the agenda to-day. But that is barely complying with the technical requirements of the Standing Orders, and I think the Honourable Members, the non-official Members at any rate, will agree with me in thinking that sufficient time, which the importance and implications of the

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Bill require, has not been given to us. This is a Bill which requires very careful consideration, and, unless we are given ample time to study very minutely the provisions of the Bill, I am afraid we cannot do justice to this Bill—at any rate I cannot do justice to it. In the first place, I cannot but regret the attitude generally taken by the other House with reference to this House. This is a very important measure, and I am surprised that the sponsor of this Bill in the other House and the Government and Leaders of the various sections have not thought fit to propose a Joint Select Committee in order to take leading Members of this House into their confidence in going through the Select Committee stage.

I find that the Bill has been drastically changed. Originally it was a civil Bill, and a Hindu Bill; it is now an all-India Bill and a penal Bill. The Bill is completely changed. Of course on the point of order, the Honourable the President was pleased to hold that it is not possible for us to take any steps to have the Bill re-circulated after it had emerged from the Select Committee. Again, this attitude of the other House, which is characteristic of the attitude of the other House generally towards this House, I very much regret. This is a piece of social legislation. Whatever may be the view of the other House as regards the political complexion of this House, that need not have entered into the calculation of the Honourable Members of the other House in considering the desirability of taking Members of this House during the Select Committee stage. It is all the more necessary for us to minutely scrutinise this Bill as the Bill is coming on to us for the first time. I also cannot refrain from making a remark about the attitude of the supporters of this very important measure in the other House. If they had really been anxious that the Bill should be passed this Session, they should have shown greater consideration to the Members of this House by having the Bill passed in the other House fairly early, and they should have given an opportunity to the Members of this House for more serious consideration of the various provisions of the Bill. They do not expect us, I suppose, to say ditto to whatever they say; and whatever may be the majority by which the Bill has been passed, we have got a duty to perform; and I conceive the duty of a second Chamber to be not to pass in a hurry any measure because it had an overwhelming majority in the other House. We have to consider on the merits the *pros* and *cons*, the arguments for and against, adduced in the other House. As a revising Chamber it is our duty to examine all the proceedings in the other House and the arguments put forward in the other House before we endorse the opinion of the other House or upset their decision. Sir, I particularly refer to the proceedings of the last two or three days. I have not received copies and I do not think there is any time for the Government of India to supply copies of the proceedings of the last two or three days to Honourable Members of this House. They have been sitting very late hours, and on the last day on which the Bill was passed in the other House, I understand the House was sitting over night to finish the Bill.

THE HONOURABLE MR. G. A. NATESAN: The speeches have been reported at length in the newspapers.

THE HONOURABLE MR. P. C. DESIKA CHARI: We have not got very great faith in the reports published in the newspapers.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-Official): Most of the proceedings are already in our hands.

THE HONOURABLE MR. G. A. NATESAN : I thought not only journalists but every intelligent citizen read newspapers.

THE HONOURABLE MR. P. C. DESIKA CHARI : I now understand the mentality of my friend Mr. Natesan. He is not a lawyer.

THE HONOURABLE MR. G. A. NATESAN : Thank God, I am not.

THE HONOURABLE MR. P. C. DESIKA CHARI : We, lawyers, are accustomed only to confine ourselves to material records and we always regard the authoritative publication of proceedings of the other House as the only proceedings of the statements made in the other House, on which we must base our judgment, and we are not carried away by newspaper statements, which may be statements or mis-statements.

THE HONOURABLE THE PRESIDENT : The Honourable Member is wandering away from the subject.

THE HONOURABLE MR. P. C. DESIKA CHARI : I am sorry, Sir. I will come back to it. So, my point is that with a view to enable the Members of this House to understand the view-points of the Members of the other House, to find out what amendments have been moved, what was the strength of feeling on these amendments, what is the nature of the arguments advanced and what is the attitude of the different sections of the other House, it is necessary for us to have those proceedings before we can satisfactorily deal with the Bill before us.

One other consideration which weighs with me is this. After the Report of the Select Committee in the other House, the general impression created is that over-zealous social reformers who are obsessed by the unstinted support given by the Government wanted to rush the Bill through in undue haste. We all know the fate of a motion to have the Bill re-circulated, after it had emerged from the Select Committee with a very drastic change—it was almost a new Bill. It is therefore necessary that the people who have got a genuine opposition to this Bill should be reconciled, so that they may have the consolation at least of knowing that the revising Chamber had before them their views and that these views were very seriously considered before arriving at some decision.

My next point is about the contention of my Mussalman friends that a very great injustice has been done, and postponement of the measure would be in the ends of justice having regard to their view-point. The Bill was originally a Hindu Bill when it was circulated. Musslamans all over the country naturally did not care very much for the Bill and they did not express themselves properly during the circulation stage. Later on, after it was made into a Muhammadan Bill, there was no opportunity for the Honourable Muhammadan representatives in the other House as well as in this House to ascertain properly the views of their constituencies, to explain the view-point of the reformers to their own constituencies, to bring them round, if possible, by telling them that the measure would not touch their religious usages at all. I think it is necessary that some time should in all fairness be given to the Mussalman representatives in this House for this purpose ; otherwise an impression will be created in the minds of the Muhammadan representatives, who are bound to be representatives of a minority community in this Council, that whenever it suits the representatives

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of the majority community, they might trample upon their usages, upon their rights, by sheer weight of numbers. I am anxious that at this stage of our political evolution such a bitterness of feeling should not be roused. The most serious consideration on which I tabled this motion is this. I believe the Government had not sufficient time to consider seriously the Report of the Age of Consent Committee, particularly that portion relating to the necessity of exemptions.

Though this is a private Bill, the ultimate responsibility of enforcing this penal legislation would be on the Government, and there is need on the part of the Government to proceed with extreme caution in measures of this kind. There were various amendments moved in the other House and Honourable Members have got on the Agenda paper a long list of amendments relating to exemptions. I am not going into the merits of those amendments, but I only want further time for the Government. The Government was not in a position to support any of the amendments moved in the other House—perhaps they were not able to accept any of those amendments on account of the vagueness of those amendments or for some other reason...

11 A.M.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir, is not the Honourable Member deviating from his motion?

THE HONOURABLE THE PRESIDENT : I was wondering myself whether I should allow the Honourable Member to continue. I thought perhaps it would save the time of the House in the end to allow him to continue to speak at length on this motion, as I would not in that case allow him to make a second speech on the motion that the Bill be taken into consideration.

THE HONOURABLE MR. P. C. DESIKA CHARI : I should like, Sir, to speak on the other motion also.

THE HONOURABLE THE PRESIDENT : The Honourable Member must then strictly confine himself to his motion for the postponement of the discussion.

THE HONOURABLE MR. P. C. DESIKA CHARI : I thought I was confining myself to the motion. I am sorry. My point is that the Government ought to be given more time to consider whether it is really necessary to bring in draft amendments as regards exemptions. I will not enter into the merits of the case at all.

After all, no harm will be done by this Bill being postponed till the Delhi Session. What is after all three or four months in the life of a nation? These age-long customs have been in existence for centuries, and no serious harm will be done by allowing these things to be continued for another three or four months. And even if one of the amendments were passed, it may not be possible for the Bill to get the assent of the Legislative Assembly again. And particularly I would refer to the heading of the Bill as a Bill of 1928. Obviously even if that formal amendment be carried out, I submit it would be necessary for the Bill to be sent back to the Assembly, and in that view where is the harm in the Bill being taken up during the Delhi Session so that any amendments that will be carried may be acceded to by the other House in the course of the same

Session ? Sir, if I am not to be allowed another right of speech on the consideration of the Bill, I shall proceed with my opposition to the consideration of the Bill.

THE HONOURABLE THE PRESIDENT : I think perhaps we had better get the motion for postponement out of the way first. Has the Honourable Member finished ?

THE HONOURABLE MR. P. C. DESIKA CHARI : I place my amendment before the House.

THE HONOURABLE THE PRESIDENT : Amendment moved :

“ That the consideration of the Bill be postponed till the Delhi Session of the Council of State to be held in 1930.”

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN : Sir, with regard to the adjournment question, I should like to invite the attention of the House to the minutes of dissent of Maulvi Muhammad Yakub and K. B. Imambaksh Qadri, where it is distinctly stated that the opinion of the leading Muhammadan theologians have not been ascertained in this vital matter, and that in the absence of that, the extension of the Bill to the Muhammadan community is not considered advisable. Secondly, the Bill was circulated under the heading of “ The Hindu Child Marriage Bill ” and not with the idea of including Muhammadans within its meshes. As the Bill is intended to come into operation from the 1st of April, 1930, I do not see for what reason it should be rushed through this very Session without ascertaining the Moslem view at large and specially those of the Moslem theologians. Secondly, Sir, I would ask my Honourable friend, Mr. Ramadas Pantulu, and I would remind him, what has happened to the Lucknow Pact, according to which the Hindus promised that if two-thirds of the Muhammadan element opposed a certain measure the Hindus would not thrust that measure on the Muhammadan community ? Was the promise of his community in that Pact one of those promises that are honoured more in the breach than the observance ?

THE HONOURABLE SIR MANECKJI DADABHOY : Are the other minority communities bound by that Pact ?

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN : No, I am not saying that the Parsis are, but I do say that the Muhammadans are. That was the Pact between the Moslems and the Hindus.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : (Punjab : Non-Muhammadan) : Did that comprise all shades of Hindu thought ?

THE HONOURABLE MR. MAHMOOD SUHRAWARDY : It was the Congress of 1916 which accepted this Pact.

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN : It was a Pact of the Hindus and the Mussalmans generally. The Hindu element was fully represented in the Congress.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras : Non-Muhammadan) : Are you a Congress man ?

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : I am not a Congress man, but I belong to the Muhammadan community and you gave that undertaking to the Muhammadan community at large. You did not give it to the Muhammadan representatives of the Congress only. That was a Pact between the Hindus and Muhammadans at large.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : It was the Congress only.

THE HONOURABLE SIR MANECKJI DADABHOY : It is not binding on this Legislature.

THE HONOURABLE THE PRESIDENT : Will the Honourable Member address the Chair ?

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : It is now clearly known to the Hindu Members that more than two-thirds of the Moslem Members of the Indian Legislature have declared themselves against the application of this Bill to their community, and out of three Moslem members on the Age of Consent Committee, two have written minutes of dissent against the extension of it to Moslems. May I therefore ask the Honourable Mr. Ramadas Pantulu how in fair justice he or any other Member of his community is enforcing this Bill on the Muhammadans in spite of their clear undertaking that they will not do so when two-thirds of the Moslem community are against the operation of a certain measure ? May I also appeal to the Government Benches that they should not be in so great a hurry to thrust this measure on the Moslems without fully ascertaining the opinion of the leading schools of thought of Moslem theologians, such as the Jamiat-ul-Ulama at Delhi, the Ulemas of the Faranghi Mahal and the Mujtahids of Lucknow ? These are the institutions to which the Muhammadans of India look for the *fatwa* in a matter of this nature. There are clear indications that all our leading theologians, together with the Mujtahids of the Shia community, are against the introduction of this piece of legislation. The orthodox element of the Muhammadan community have got very cogent reasons why they want the adjournment of this motion to the winter Session in order to be able to elicit the opinion of Muhammadan religious heads and the opinion of Muhammadan schools of thought that are looked up to by every Muhammadan of India for guidance. I do not think that there is anything pressing at this juncture. I appeal to the Government to help us, and I commend my amendment to the House. I do not know whether my appeal will have any effect. I am not responsible for it. I have done what I can.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative) : Sir, my Honourable friend Major Nawab Mahomed Akbar Khan was interrupted very much when he was speaking. So, I shall speak only for a few minutes. There is a Resolution of this House passed on the same day, or possibly on the next day, when we passed the Lee Commission recommendations here and when we granted all the demands that were made on behalf of the Civil Service. On that day, we passed a Resolution that any Resolution that was opposed by two-thirds of the Muhammadans present on the occasion should not be taken into consideration. That is a Resolution of the House. Unfortunately, I did not know that this matter would come up ; otherwise, I would have brought it with me. In the course of the afternoon, if all the

reports are available here, I shall produce it. All this heckling and talking and a certain amount of triumph that was exhibited here are a little out of place. I was present and voted when this House agreed to the Resolution not to pass any Resolution which is opposed by two-thirds of the Muhammadans present.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: When was that ?

THE HONOURABLE MR. G. A. NATESAN: Under what circumstances ?

THE HONOURABLE MR. G. S. KHAPARDE: That was on the same day or about the same day on which the Lee Commission recommendations were passed. It may be in 1924 or in 1925. If you give me time, I shall produce it.

THE HONOURABLE MR. SURPUT SING: (Bihar and Orissa: Non-Muhammadan): Sir, I beg to support the motion brought by my Honourable friend Mr. P. C. Desika Chari that the consideration of the Bill be postponed till the next Session of the Council of State. My object is obvious. In view of the utmost importance of the Bill to society and by reason of the fact that the measure has been passed by the Assembly quite at the fag-end of the session, it is just and proper that the consideration thereof should be postponed for the present. There is no gainsaying the fact that the Bill is calculated to affect the most delicate domestic relations of millions and millions of the people of our country. The Bill was passed rather hurriedly by the lower Chamber. Our House being a revising body should have sufficient time to consider seriously and dispassionately the *pros* and *cons* of the various provisions of the Bill. Our Chamber should avoid all hurry in the matter and set about the task in a calm and sober spirit without any passion or.....

THE HONOURABLE THE PRESIDENT: Order, order. Honourable Members sitting in the neighbourhood of a Member who is speaking should remain in their seats.

THE HONOURABLE MR SURPUT SING: In a calm and sober spirit without any passion or prejudice in judging the minute details of the measure. But the time afforded to us for doing so is absolutely inadequate. Besides, Sir, we have to gauge the sense of the whole country with regard to the Bill before we can commit ourselves in any way. I propose therefore that the consideration of the Bill should be left over till the next Session of this Council.

THE HONOURABLE SIR MANECKJI DADABHOY: Sir, I oppose this motion. This motion is simply brought in this House (*An Honourable Member*: "Motion or amendment?") The motion to adjourn. It has been simply brought in this House as a dilatory measure for the purpose of preventing this Bill being placed on the Statute-book by this Council in the course of to-day. None of the Members who have spoken this morning have urged any substantial reasons for postponing the consideration of this Bill to the next Session at Delhi. The only ground which is common to all the Members who have opposed this motion is that they have not had sufficient time to consider the question, and that we should elicit the opinions of the country before we can give our adherence or opposition to this measure one way or the other. I would at once point out that that argument regarding not having adequate opportunities to consider the measure is simply futile. This Bill has been before the Legislative Assembly for the last two years. It was remitted to Select Committee on two distinct occasions. It has been debated in the other House many times.

THE HONOURABLE MR. P. C. DESIKA CHARI : Have you got all the debates ?

THE HONOURABLE SIR MANECKJI DADABHOY : Yes, all the debates, except the last debate regarding some futile amendments, some silly amendments, that were brought in that House. I have got in my possession all the proceedings relating to most of the amendments now proposed.

Now, just consider for a moment what will be the result of postponing this motion. The Bill contemplates that the Act should come into force next April. If you postpone the decision on this Bill till the end of February next, that would mean that you will not be able to bring the Act into operation on the 1st of April next, as it is now contemplated. What will be the result ? You will have to bring the Act into operation probably at the end of next year, or the beginning of 1931, and the result will be that a large number of marriages will take place both among Hindus and the Mussalmans with a view to defeating and frustrating the provisions of this Bill. Is this Council, I ask, justified in doing this when they know that this Committee which was appointed to consider the matter, and which was presided over by Sir Moropant Joshi, has pointed out that the injury done to young girls is of a serious character ? Those who have studied that report cannot overlook the fact that it would be a criminal neglect, in my opinion, on the part of any Member of this Council to delay the passing of this Bill for even a single day.

As regards the other point that the public have not had opportunities of expressing their opinion, I may at once say that that point is also untenable. Many Muhammadans of all classes, many learned Maulvis and Ulemas were examined by Sir Moropant Joshi's Committee and many of them unquestionably and unhesitatingly

THE HONOURABLE MR. G. S. KHAPARDE : Was there any Ulema on the Committee ?

THE HONOURABLE SIR MANECKJI DADABHOY : That is beside the point altogether. The Committee was duly constituted and there were at least three Muhammadan Members on it.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Of whom two—the majority—dissented.

THE HONOURABLE SIR MANECKJI DADABHOY : They have not dissented on all matters. As regards certain points they have dissented. I do not think some of the Honourable Members have even read the dissenting minutes. They have not dissented on all the points. They have only dissented on certain points

THE HONOURABLE MR. P. C. DESIKA CHARI : On main points.

THE HONOURABLE SIR MANECKJI DADABHOY : And they brought forward certain alternative schemes. Most of them signed the original report subject to explanatory reports.

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN : If my Honourable friend will read Maulvi Muhammad Yakub's

THE HONOURABLE THE PRESIDENT : Order, order.

THE HONOURABLE SIR MANECKJI DADABHOY : I therefore submit that this motion is simply brought forward with the object of delaying the passing of this legislation, and I am perfectly confident that this Council, in its sagacity and its sound judgment, will not see the advisability of agreeing to such an unreasonable request.

THE HONOURABLE KUMAR SANKAR RAY CHAUDHRY (East Bengal : Non-Muhammadan) : Sir, I rise to support the original motion moved by my Honourable friend Mr. Ramadas Pantulu and to oppose the postponement motion. Objection has been raised about the Bill being taken into consideration on several grounds. One is that it affects the Muhammadan community, and my Honourable friend Mr. Khaparde referred to a Resolution that we should not pass any measure if two-thirds of the Muhammadan representatives were opposed to it. With regard to that point, my submission is that this is not a Bill to which that applies. It is not a religious Bill at all because it does not affect the legality of marriages. All that it says is that if a marriage takes place under a certain age those who perform the marriage shall be liable to a fine, not that that marriage will be illegal. So it does not affect the religious rite or sacrament of marriage. It is a general Bill affecting Hindus and Muhammadans alike. If effect were to be given to my Honourable friend Mr. Khaparde's contention in all Bills of a general character, which of course affect Muhammadans, then if two-thirds of them object no Bills could be passed. Take, for instance, the last Bill we had, the Transfer of Property Bill. Suppose two-thirds of the Muhammadans raised an objection, would it have lain in the mouth of Mr. Khaparde to say that that Bill could not be passed ? This Bill has nothing to do with Hindus and Muhammadans particularly ; it affects them equally ; but it does not affect their religious rites, and the marriage remains perfectly valid. It only tries to discourage early marriages. It is quite clear that if such a marriage does take place it will remain valid in law.

THE HONOURABLE MR. G. S. KHAPARDE : May I be permitted to explain what I meant. What I meant was that when religion or religious sentiments are involved, then there is a pact between Hindus and Muhammadans that if two-thirds of them oppose such a measure it should not be carried.

THE HONOURABLE KUMAR SANKAR RAY CHAUDHURY : I have already explained that this has nothing to do with religion, because it does not prohibit early marriages. All that it does is to try and improve social conditions by discouraging such marriages. If *Sati* was not a religious movement, the object of which was to take a widow quickly to heaven (Laughter), I think this also cannot be taken to be a religious Bill. Then with regard to the grievance of the Honourable Mr. Chari that the Bill originally was not intended to touch the Muhammadans and that the Muhammadans have not been given sufficient opportunity to deal with the new Bill, my submission is that though the Bill as originally introduced was confined to Hindus, the Bill was then postponed on the ground that the Age of Consent Committee was going to deal with cognate matters. And what were the terms of reference to the Age of Consent Committee ? Paragraph 2 runs as follows :

“ To inquire into the effect of the amendments made by the Indian Penal Code (Amendment) Act, 1925, and to report whether any further amendment of the law is necessary, and if so, what stages are necessary as regards offences (a) without and (b) within the marital state.”

[Kumar Sankar Ray Chaudhury.]

I lay particular emphasis on clause (b). That Committee was appointed to deal with the age of consent and to deal with sections 375 and 376 of the Indian Penal Code. It had a general application. It applied to Hindus as well as Muhammadans, and the second paragraph comprehended also the case of offences within the marital state. So the object with which this Committee was appointed was to deal with the Hindus as well as Muhammadans, with regard to the age of consent not only outside but also within the marital state. It does not lie in the mouth of my friend Mr. Chari to say now that the Muhammadans were taken by surprise. There were Muhammadan representatives also on the Committee and they have, as my Honourable friend Sir Maneckji Dadabhoy pointed out, supported to some extent and to some extent dissented from the report of the Committee. That is with reference to the objection that Muhammadans have only recently been brought within the scope of the Bill.

Then, with regard to the Bill being hurried through in this House, my submission is that the Bill has been long before the public and before us and we should not postpone it further, and my reasons for that are these. I as a Member coming here from the Legislative Assembly know how difficult it is for a private Member to introduce a Bill in the Assembly and to carry it through. First of all, it is very difficult to get a ballot in view of the large number of Bills that private Members try to introduce there. Then, if you get a ballot, in view of the small number of days that are allotted to private business and the large amount of work to be done on those days, it is very difficult to carry a Bill through. In my experience of the last eight years I think only two or three private Bills have been got through the Assembly. Then there is the question of Government support. It is only I think in the case of the present Bill that we have been able to secure Government's support. The Government have all along assumed a neutral aspect in these matters. I think their conduct was disapproved by some higher authority in England perhaps, and that is probably the reason for the change in their conduct now. And we do not know whether this attitude will continue for all time to come. Next, the Labour Party is in office but not in power. That is also perhaps one of the reasons why the Government have taken up this new attitude. If the Labour Government goes then the Government here also may change their attitude. Again, you do not know how long this Assembly and this Council of State are going to last. They may be dissolved in November and a fresh election take place. So it is not advisable that we should postpone this Bill. The principle of the Bill I think no one has questioned. It is only in matters of detail that objections have been raised. We can later on bring in amendments for the improvement of the Bill after having obtained experience as to its working. There will be time enough for that. Under all these circumstances, and considering the fact that if we defer this Bill, there is hardly any chance of the Bill becoming law at even a distant date, I submit that the Bill should be allowed to be proceeded with and to be carried into effect as law without further delay.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: I move that the question be now put.

THE HONOURABLE THE PRESIDENT: In accepting that motion for closure, I give the Council to understand that I am accepting it only in

regard to the amendment moved by Mr. Chari ; I am not shutting out the discussion on the motion for consideration of the Bill.

The question is that the question be now put.

The motion was adopted.

THE HONOURABLE THE PRESIDENT : The question is :

“That the consideration of the Bill be postponed till the Delhi Session of the Council of State to be held in 1930.”

The motion was negatived.

THE HONOURABLE MR. G. A. NATESAN : Sir, I rise with a full sense of responsibility to support this Bill. I have given my most careful consideration to all aspects of this question. I have had to read—being compelled as a journalist to read everything for and against it—all available literature on the Bill and I have further had the benefit of discussions with people whom I consider most qualified to pronounce an opinion upon a Bill of this character, who not only by their learning, their scholarship, their thorough uprightness and their thorough knowledge of the Sanskrit literature, the texts and Smritis, are entitled to pronounce an opinion. I may state that this Bill has had the support of such an eminent person as Sir Sivaswamy Aiyer, who certainly cannot be accused of giving his support to rash legislation : he has himself had long experience of the country as an administrator, and everybody knows that he is a great student of Sanskrit literature and the Smritis. I have further had the advantage of discussion with Mr. T. R. Venkatrama Sastri, who has been in public life for a long number of years, who was also for sometime Advocate General to the Government of Madras and is a student of Sanskrit and has established his reputation as a good scholar. I am quite aware, Sir, that there is opposition to this Bill and that a great deal of it is genuine. I am aware, Sir, that there are a large number of educated people who have given their support to this Bill and thereby incurred unpopularity and perhaps obloquy and calumny for the moment. I am aware that Government have also taken a serious responsibility, that unscrupulous agitators may take advantage of it and bring Government into trouble. But, Sir, I feel that those who have supported this Bill and incurred unpopularity and the Government who have taken the responsibility of supporting this Bill are doing the right thing, and their consolation should be that they are helping a progressive measure which is calculated in the end to promote the good of not only the Hindu community and the Muhammadan community, but the whole Indian community in general. (Applause.)

Sir, in a measure of this kind, you cannot possibly expect everybody to agree. In no part of the world has anyone agreed to legislation of this kind without some sort of demur. You always have the conservative element ; you always have the progressive element ; and the history of the world is the history of conflict between the conservative and the progressive elements ; and though the conservatives in the beginning seemed to have larger support, in the end the progressives have triumphed. In many instances the conservatives have had to confess that they have been in the wrong and the progressives have been in the right. As my Honourable friend Mr. Ramadas has pointed out, we have advantages and disadvantages, but I do think that the advantages outweigh the disadvantages, and the Government have been quite justified in giving their full support to the Bill, without which a measure of this kind could not possibly

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be carried ; and the fact that Government have lent their support does not necessarily mean that the measure itself is wrong. On the other hand, I feel confident that they have given their support to a measure which will fully justify itself in the eyes of the public, though not now, but later on. Even those who oppose the measure now, if I may say so from a short-sighted policy, will see later on that this measure is to their advantage.

I support this Bill because I am convinced that early marriage, early consummation and early maternity are evils and that they are fraught with disastrous consequences. Anyone here with any heart, who knows something about the health of a girl wife, who knows something of the health of the children begot by girl wives, who knows something of the babies that survive, weaklings, lean and of poor health, who knows how modern conditions have altered many things, will certainly support the measure. In the good old times, I may say almost all the girls were in the villages where they enjoyed pure light and air and where conditions were healthy. Those were the days when girls had not even education, they had not the mental and physical strain caused by education. Now, what happens ? People migrate in large numbers to towns and girls are married and girl wives are taken to different towns and compelled to live under the stress of economic circumstances in congested houses and to become mothers too soon ; and I tell you from experience—and I challenge anyone to contradict my statement—that in most cases the deaths of girl wives and in many cases the deaths of infants are due to the system under which we are suffering. Indeed it is sad to contemplate the fate of many of these girl mothers. I am not talking from imagination ; I have a very high authority in support of my point, namely, Dr. Campbell, Principal of the Lady Hardinge College at Delhi, who, I may say, has also had a long experience in Madras as a doctor, and her wide experience has enabled her to state :

“ She had attended more than one thousand Hindu girls for child births at the ages of from 12 to 16 years. And the evil effects seen in them and in others under observation or treatment as a result of early child bearing could hardly be exaggerated.”

Mark these words—and I hope anyone who has humanity in him will confess that his experience is the same as that recorded by the doctor—

“ Tuberculosis was very often developed during pregnancy or lactation as the resistance of the tissues was lowered by the strain, unnatural at so early an age. This is the reason why tuberculosis was much more common in girls than in boys. About 40 per cent. of the girl mothers died in the first year and those who survived were weaklings.”

THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Educate them. Remove the ignorance of the masses.

THE HONOURABLE MR. G. A. NATESAN : Sir, I think, it is a greater difficulty to educate the boys and girls and the masses and even Members of the Legislature. It is a stupendous task. (Laughter.) Sir, this is in accordance with our own experience and the experience of doctors, the testimony of one of whom is unimpeachable, that there is really a great toll taken of human life as the present social conditions stand. I cannot therefore conscientiously give any sort of support to the opposition.

Sir, we have been told that mothers are against this Bill and they will be. I quite understand that ; owing to shortsightedness or inability to understand

exactly the full significance of this Bill, at present the mothers may be against it. I want to tell this House that there are many mothers and parents who are now anxious, as far as possible, to marry their girls as late as it is convenient to them. But it is because you have the system of early marriage and because you have this evil system of paying bridegrooms' prices that every parent is anxious to get his girl married soon. Let the conditions be altered, as they will be when this measure becomes law, and then many parents will welcome this; and for this reason that even the old mothers in the villages are anxious and the education of the girls will certainly be advanced too. To a great extent most of the parents now, on account of the custom of society, stop the girls from going to school as soon as they are nearing the age of puberty. Well, if this Bill is passed, that practice will be put a stop to, and that is certainly a matter on which you ought to congratulate yourselves.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: You cannot force people to send their girls to school.

THE HONOURABLE MR. G. A. NATESAN: Those who are anxious to send their girls to school will have all the support they want.

Well, Sir, I have been told that if this Bill is passed it is likely to affect the morals of the people. I deny that. I live in the midst of a large non-Brahmin population in the city of Madras. Indeed, I have been living there for the past 30 years, and most of the non-Brahmin girls marry after puberty. It is in fact a slander to say that these girls are in any way worse in morals than the girls who marry early. And I think those who have advanced this reason are talking without a sense of responsibility and without realising in the least what the full implication of such a slanderous statement is.

Sir, we have next been told that religion is in danger and that Government is making a great mistake in supporting a Bill of this character which cuts at the root of the fundamental tenets of our religion. I deny that this Bill affects our religion. Those who are so obtuse as not to be able to distinguish between the fundamentals of religion and the practices and customs associated with it, which are quite different things, are under a delusion. But I do say that those who are conversant with the Hindu religion—and I speak also for the Muhammadans because many Muhammadans are as truly religious as those who have opposed this Bill—have also said that this is not a measure which stands in the way of religion. And I prefer to take the opinion of those who are better entitled to speak than those Pandits and Maulvis who, I fear, cannot be expected to take a long view of questions like this.

Then again, Sir, I am entitled to support this Bill because it solves more than anything else the problem about which for many years in Southern India we have been agitating, namely, this question of post-puberty marriage. Some 20 years ago a distinguished citizen of Madras, the late Mr. V. Krishnaswami Aiyer, started this agitation for post-puberty marriages. We formed an association called the Madras Hindu Association of which I had the honour to be secretary, and we carried on a great propaganda in its favour. We invited a great deal of literature and we had the good luck at that time of getting a first-rate brochure on the subject written by Mr. Sastri—now the Right Honourable Srinivasa Sastri. I may add that when Mr. Sastri married his daughter after puberty, a number of orthodox friends—men and women—including

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my mother, attended the marriage and there was no more talk about it, no attempt at ostracism or ex-communication. I mention this publicly because, if Government has any doubts that orthodox people will give them much trouble, they need not have any apprehension because when the Bill is passed they will reconcile themselves to it and the situation will not be so grave as some people make out.

Sir, some people have said it is contrary to Hindu ideals. I challenge anyone who has a correct conception of Hindu society and of Hindu religion to substantiate that. More than anything else I would say this, that if there is anything in our ideals or religious customs which makes them incompatible with modern conditions, which will prevent our taking our rightful place among the nations of the world, I say rather than live in that fashion, we should give up those things. I am surprised that the opposition to this legislation comes from politicians who talk of non-co-operation, *satyagraha*, civil disobedience and non-payment of taxes, independence, and so on. I cannot for a moment bring myself to believe that opposition to a measure of this kind should come from people like these. But after all they ought not to forget that when we get self-government, when we get full responsibility and when our Legislature get full power to legislate, they will then have to take up social legislation, and I wonder if the people who talk in this fashion realise what they are doing.

I do not think I have much more to say, but two or three things I should like to say in conclusion. To those who are opposed to this Bill I say I honour your genuine opinion but do get yourselves reconciled, because in the end the measure will be useful. To the supporters of the Government, who have been most active in getting this measure on the legislative anvil, I would say, and I would ask the people also who oppose me to say, that they are actuated by the most humane considerations and motives, and you have no right to take them to task for doing what they consider to be right. I am sorry to see that one of the active members of the Swarajist Party in Madras declared that it is the duty of those who are genuinely opposed to this measure that they should take steps to disobey this legislation. I would only remind them that they are doing a thing which is fraught with the gravest consequences to society. They must remember that a very large part of the Hindu and Muhammadan Members of both Houses are giving their support to this Bill, and that the Government have at last abandoned the attitude of neutrality which they had maintained for long years, and given a helping hand to this Bill owing to the pressure of public opinion. If they now start the obstruction of civil disobedience, I do think that their conduct will be fraught with consequences to Indian society which will certainly be disastrous. To the Government I would say: "You have certainly taken a serious responsibility in giving your support to this. You should give all the publicity that lies in your power to this legislation. Let there be no village in which your village munsiff is not active in explaining to the people that there has been a change in the law of marriage, so that no man who hereafter is brought into court will be in a position to say that he was not aware of this legislation and that the Sircar had not informed him." If you do this, and if those who are opposed to this Bill recognise the genuine and honest motives which have actuated the Government

to give their support to the measure, I do think that Indian society will sooner or later get itself reconciled to this measure.

I will conclude with one more observation. It often happens that when some one who is most dear to us, particularly a friend of the doctor, is suffering from a disease which requires operation, and when the doctor operates on him, gives one cut and then another, and further uses a little pressure to take away all the putrid matter, the patient cries and very often curses the doctor and the relations round him. But what happens later on? When the operation is over, when he is cured, he gives the doctor his thanks and blessing for his great service and for saving his life. I assure you that we have now a situation somewhat similar to this. When the evils of the system are eradicated, not only the supporters of the Bill, not only the Government, but everybody who has now lent his support to advancing this measure will, I know, receive the thanks of their bitterest opponents.

And not only that. I look forward to the day when those who have opposed the Bill to-day will find the condition of things so changed, so altered for the better, that girls will be studying in schools and colleges after 14, that marriages of girls and consummation will be celebrated on the same day; that the system of celebrating it for four and five days, which entails considerable expense upon the parents, will be discontinued; that girls and boys will be married and their consummation celebrated at a time when they are physically fit, when the children of such unions will be healthy; and all will say that this legislation has proved to be for the good of our society.

THE HONOURABLE SIR EBRAHIM HAROON JAFFER (Bombay Presidency : Muhammadan) : Sir, I am desired by the Muslim elected Members of this Council to make a short statement regarding the Bill which is before us, and with your kind permission I hereby do so. Ever since the British Government began to administer this country, they have scrupulously and without any reservation respected the Muslim religion and the personal law obtaining therein. This attitude of the British Government has been consistently confirmed by many decisions of the British Courts and the Privy Council.

THE HONOURABLE THE PRESIDENT : Will the Honourable Member kindly raise his voice ?

THE HONOURABLE SIR EBRAHIM HAROON JAFFER : Sir, I beg to point out that we have received messages from a large number of Ulemas, both Sunni and Shia, including the President of the All-India Jamiat-ul-Ulema, the Principal of the Deoband School of Theology, Ulemas of the famous Farangi Mahal and the Mujtahids of Lucknow bearing their serious and considered opposition to this proposed legislation. Further, Sir, we feel bound to observe that the passing of this Bill will be contrary to the provision of the Lucknow Pact, relating to religion and personal law, by which it was agreed that such subjects should not be discussed in and passed by any Legislature in India if two-thirds of the members of the community concerned were opposed to it. We feel deeply concerned in the establishment and perpetuation of this convention, especially having regard to the approach of responsible Government in India, and we feel that the non-observance of this convention under

[Sir Ebrahim Haroon Jaffer.]

majority rule would mean the removal of protection and the safety of our community in matters of personal and religious laws.

With these observations, Sir, we oppose the Bill.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, on principle I do not like the Indian Legislatures to interfere with the religious injunctions of the various religions. But as this principle has not been followed by the Legislatures, I have no other alternative but to support the motion of my Honourable friend Mr. Ramadas Pantulu. In the Punjab, Sir, we have about 400 Sanatan Dharma Sabhas. I have also the privilege of being the President of the Punjab Sanatan Dharma Pritinidhi Sabha, a representative institution of the orthodox Hindus and Sabhas of the Punjab. I am also the President of the Sanatan Dharma Sabha of Lahore. But all the same I do not like to speak on behalf of any of these orthodox institutions to-day. I might mention, Sir, that I have not received so far any instructions from any member of my constituency or from any of the Punjab orthodox Hindu organisations or persons asking me to oppose the Bill.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Have you given your evidence before the Age of Consent Committee ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Yes. Before the Age of Consent Committee I gave my evidence that, in deference to the Hindu orthodox opinion, I was for the age of 13 as far as the marriage age of girls was concerned. But I also stated there, which I think my Honourable friend Mr. Suhrawardy does not know, that my personal opinion was for a higher age. As far as I know, not a single public meeting has been held in the Punjab to protest against the passing of this Bill. I might also state here for the information of the House that before marrying my girls, I consulted some of the best Pandits who were learned scholars, and their ruling was that there was no religious bar to my marrying my girls after they had attained puberty.

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN : After they had attained puberty ?

THE HONOURABLE MR. G. S. KHAPARDE : Are you a Brahmin ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I am a Kshatriya. My Honourable friend Major Nawab Mohamed Akbar Khan interrupted me with a remark whether I meant after puberty. Perhaps I might inform him that the controversy among the Hindus is whether girls are to be married before they attain puberty or after they attain puberty. That was the reason why I used that phrase to state clearly that the ruling given to me by the learned Pandits was that there was no religious bar to the marriage of girls after they attain puberty. I accordingly, Sir, married my girls over the age of 14, and in the orthodox circles there was no adverse criticism made upon me. I understand it is a fact that since I gave my evidence before the Age of Consent Committee, there has been a marked change in the views of the orthodox Hindus in the Punjab. As far as the urban educated population is concerned, even now, Sir, the age of girl marriage ranges between

14 and 18, if not higher. It we take the average among the educated Hindus, it will be about 16. So, Sir, it seems that at least the province of the Punjab is for having this reform, and for this reason, I give my support to this motion. It is a matter of regret, Sir, that in the Punjab, particularly in the hill districts and the sub-montane tracts, early marriage is still much in force. In certain communities the girls are sold. By sale I mean that the parents of the girl, before betrothing their daughter, accept a certain sum of money, and this custom is generally prevalent among the poorer and the lower classes. It is also in force among the Rajputs of the Hoshiarpur and Kangra districts, and there it is sad to find that the poor parents, considering that the girl may not be sold for a higher price, are forced to marry their boys to secure their money not being lost. I think at some near date some legislation ought to be brought

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forward to put a stop to that custom of selling girls:

I hear, Sir, that in Bengal the custom is reversed and that there the boys are sold. But however, Sir, when we are dealing with reforms, I think that this measure which it is very necessary to pass. . .

THE HONOURABLE THE PRESIDENT : I am sorry to interrupt the Honourable Member in the middle of his speech, but it is 12 o'clock, and, in pursuance of the undertaking which I gave yesterday, I must adjourn the House till half past two o'clock this afternoon.

The Council then adjourned for Lunch till Half-past Two of the Clock.

The Council re-assembled after Lunch at Half-past Two of the Clock, the Honourable the President in the Chair.

THE HONOURABLE THE PRESIDENT : Has the Honourable Lala Ram Saran Das concluded his speech or does he wish to continue ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Yes, Sir, I want to make a few more observations. Sir, as far as the question of age of girls is concerned, I dealt with it this forenoon. Now, I will take up the question of boys. According to the Hindu religion, life is divided into four parts and after Brahmacharya comes the adult age. So, according to our Hindu Shastras, the age proposed in the Bill is quite in harmony with them.

Now, I come to the economic side of the question. In ancient times, even a few decades back, prices of foodstuffs were very low and the cost of living was very much lower than what it is now. With the heavy increase in the cost of living and with the heavy increase in prices, we find that our physique has greatly suffered. To a friend of mine, who is a Member of the Assembly, when he told me that marriages have been taking place in the early years of life in the olden days and nothing serious has happened and what was the reason for bringing this legislation now, I said that one of the reasons was that our physique has greatly suffered ; we must protect our body first before we do anything else ; and I added that the question of unemployment and the question of higher living have made the life of an ordinary person very difficult. It is desirable that until and unless boys and girls are of good physique and of good strength, they ought not to be married. In the Punjab, Sir, we have got various communal institutions, the Brahmin Sabha, the Kshatriya Sabha, the Agarwal Sabha and the Ahluwalia Conference, the Jat Conference and various other such institutions. As far as my knowledge goes, they have all advocated

[Lala Ram Saran Das.]

this reform. Then, Sir, comes the question, in case this legislation goes through, whether or not the people will be prepared to welcome it. As far as the Punjab is concerned, I think the people will welcome it, and there will be no defiance of law.

With these few words, Sir, I support the motion.

THE HONOURABLE MR. G. S. KHAPARDE : Sir, to save time, I have divided my argument into seven parts, (Laughter) and I shall begin with the first. The first is that this Bill has attracted a great deal of notice and I suppose myself and the Government are glad that it had attracted so much notice. Why has this Bill excited people so much ? It is for this reason, and a good reason. Here in India the earliest Indian Penal Code took away all our criminal law ; then came the Criminal Procedure Code which took away all our criminal procedure ; then came the Contract Act, which took away all our dealings in moveable property.

THE HONOURABLE SIR MANECKJI DADABHOY : Are you serious ?

THE HONOURABLE MR. G. S. KHAPARDE : I am absolutely serious. In this country our penal laws have gone ; our procedure has gone, dealings in moveable property have gone, and only yesterday we disposed of real property too. Now, what remains for us of our law ? I suppose it will be conceded that we naturally like to be judged and to be guided by Indian law. The Hindus have lost all this, so have the Muhammadans. All that is left to us, Hindus, is three things, marriage, adoption and inheritance ; and the Muhammadans have not got adoption, but they have got marriage laws and their laws of inheritance ; these laws have gone, and of those that remain, the marriage law is about to go now. So, if this legislation passes, we may be regarded as persons who had no civilisation at all, who had no laws of our own, who had no notions of our own ; everything has to be governed by Roman law as it has filtered through the English law. That is what the position comes to. I do not like that position, frankly speaking. In those days of the Penal Code, people had not so advanced ; there were very few people who knew English ; in the days of the Evidence Act and the Criminal Procedure Code, we all submitted ; nobody knew what they were about. It was after Dadabhoy Naoroji went to England that these political matters started and we began to understand that we had some rights and they had to be protected. At present Government have disposed of all laws of contract, tort, criminal jurisdiction, civil jurisdiction, evidence ; all these things have gone. All that remains practically now is this inheritance and marriage ; and about marriage this is the Bill, and we encroached upon inheritance about this time last year. When Sir Hari Singh Gour's Bill came in, I objected to it, saying piece-meal legislation to destroy the Hindu system is wrong. If you do not want Hindu laws to obtain here, by all means bring in a law and show it to me and say : " This is better law than Hindu law ", but to pull away one pillar one day, another storey the next and take way the foundation on the third day is, I humbly submit, not the right procedure. It is not only I that have got this feeling ; there are many people who have the same feeling ; that if the marriage law and inheritance law are passed, we might as well be Hottentots, non descripts of Africa ; and have Roman law as it has filtered through the English law. Now this is a position

which I do not think the Government itself wants nor do I want it. How has it come about? It has come about, by the process of taking away one thing at a time; not dealing with the whole subject but taking away one portion at one time, and in that way you can undermine the foundations of this hall: this hall cannot stand. But that is not the way.

Therefore, my first and strongest argument is that India is inhabited at present and has been for some time by Hindus, Muhammadans, Parsis, Christians, Jews and the hill tribes, if you like to have them on the list. Well, the Hindus had their civilisation, they have a long-standing civilisation of their own. It existed in 12,000 B. C. The Chaldeans have mentioned in their books Vedas and the particular forms of prayer that our ancestors had then; they still exist, and I am still here to-day to recite them and I recite the same prayers that they have put down in their encyclopædias. That is to say, the Hindu population has been existing for nearly 12,000 years before Christ, and nearly 2,000 years after; that is to say, for 14,000 years we have existed. So, the Muhammadans had a large civilisation going on for a long period, and they are still here. The Christians are also here. So are the Parsis, who have also got a civilisation more or less contemporaneous with ourselves.

Well, now, is all this civilisation to be turned out? Why? For what reason? They say our customs are not good. Well, Sir, I put the question—if they are so bad, if all these customs are so bad, how is it I have survived for 14,000 years and am still here to talk and pray in the language which our ancestors used? If our customs are so bad and everything is so contemptible, then we should have disappeared. The Phœnicians came after me: we have borrowed some things from them. The Greeks came after me. The Romans came after me. Then there were the Dark Ages, and the Middle Ages, and we are living in the Modern Age now. And all this time I have been there, saying the prayers which my great-great-grandfather said. Where is a Greek now? Who prays in Greek? Where is the worship of Apollo? Who worships Janus in the Latin tongue? Why are they all gone? The Phœnicians are gone. The Greeks are gone. The Romans are gone. Therefore, we claim that our formula, our prayer solves the problem of immortality, and we have been at least for 14,000 years immortal. And the whole thing cannot be so bad as to deserve to be turned out root and branch. Similarly, the Muhammadans will say the same thing. The Jews will say the same thing. I have always claimed that this India is a museum of God, and every nation that is good is brought and kept here. The Aryans were good: they came here. The Greeks were good: they came in the shape of Alexander. The Romans came and invaded other parts. The Muhammadans were good: they came. Then came the Christians. The lost tribes of the Jews are to be found in parts of the country as Bani Israëls. Why has God brought all these people together? Not that one should kill the other. Not that one should supersede the other. But that everybody should live in comity and harmony. Therefore, going on this principle, I say: "Let each man observe his own laws. Do not bother him or turn him out of the things he has inherited." Up to this time the Government have adhered to their original intention of not disturbing the customs or religious observances of the people. And what is no less important is the Proclamation of Queen Victoria. I do not propose to quote from it, but it has been quoted very often and it has been definitely promised

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that religious matters and customs and ancient things will not be disturbed. Well then, why is it my friend to-day in moving that the Bill be taken into consideration stood up and thanked the Government for the assistance which they rendered in the other House and expected that they would render the same assistance in this House here? I say this is very bad indeed. Government have promised to be neutral. Why are they not neutral now? What has happened? Have all these customs sprung up since the British came here that they have become so anxious over it to-day after having ruled over us for over 200 years? Why is it that this thing has come up at this particular moment? The customs have been there ever since the British came and long before they came. Why have they attracted the Government so much as to induce them to depart from their rule of neutrality? This morning it was said—and it has been said elsewhere—that the Government took upon themselves to abolish *Sati*. Of course, there is a section in the Penal Code which punishes *Sati*, and we all know that *Sati* was abolished by the British Government.

THE HONOURABLE MR. H. B. CLAYTON (Bombay : Nominated Official) : Don't you think it was rightly abolished?

THE HONOURABLE MR. G. S. KHAPARDE : That is what I am going to submit, if you will kindly hear me another minute. I say the British Government abolished *Sati* by enacting the section. But *Sati* they could never abolish, and it has not been abolished. All cases of *Sati* do not come to notice. Formerly they used to be burnt publicly on the funeral pyre. Now, instead, when a woman thinks her husband is in despair, she goes and poisons herself, or pours kerosene over herself and burns herself, or jumps down a well. And in that sense *Sati* has not been abolished. Only on paper we know that there is a section which punishes *Sati*. As a matter of fact, *Sati* is so deeply rooted in human nature that it cannot be abolished. I will mention to you instances of it. From the days of Cranmer who allowed himself to be burnt alive rather than recant, the principle of giving up your life for a cause you hold sacred, has been established. To take the latest example, when the "Titanic" sank in 1910, and Mr. Stead, the Editor of the *Review of Reviews*, was on it, when the ship got into trouble and the sea was very boisterous, life-saving apparatus was brought and offered first to the ladies who were told : "Ladies save yourselves". They were English—I can mention their names. And these English ladies said : "What about our husbands?" They said : "There is room for your husbands". The ladies then said : "Look here, our place is by the side of our husbands. We do not care to save ourselves without our husbands." What was the consequence? The "Titanic" went down and these ladies died with their husbands, and a few days after when the bodies came up there they were arm in arm with their husbands. So you see you have not abolished *Sati*. I say it certainly exists and your own people followed it and they were *Satis* to die with their own husbands. What more do you want? I do not think there is any single Englishman who condemns these ladies who gave up their lives and refused to leave their husbands behind. Supposing one of these ladies had been saved or revived, do you think she would have been prosecuted for attempting to commit suicide? I do not think any English Judge would give a judgment against her. Where is there

a single jury that would? Why then, *Sati* exists. It goes on. It is not true to say that it is abolished. *Sati* only means that a woman loves her husband so much that she prefers to be burnt along with his body. There are so many people willing to die for a principle from the days of Cranmer. McSweeney was the last person who died for the sake of a principle and starved himself. And there are so many boys at Lahore and Meerut....

THE HONOURABLE THE PRESIDENT: The Honourable Member is getting very discursive. There is no question of anybody dying for the sake of a principle in this Bill.

I think the Council will be interested to know which of the Honourable Member's seven points he is dealing with at the moment. If he is still on the first point of the seven, assuming that all the points are of equal importance, his speech will be of very great length.

THE HONOURABLE MR. G. S. KHAPARDE: This is my first point, and to show that it is unconstitutional I am putting forward these instances. The first argument that I was urging is this. The Government promised neutrality. They have now broken that promise, and they are doing something which really speaking cannot be called neutral. That is not a constitutional procedure. I shall curtail this part of my argument and go on to the next point, which is this. The principle of all representative governments is that people elect certain representatives on certain issues, and those representatives, whether in one Chamber or two Chambers, decide those matters and matters connected with them. In this particular instance, I ask, was this the question before the country on which the representatives sitting here and in the other House were elected? I am one of the elected Members, and I humbly submit that this question was never before the people at all. The question in those days was that Mr. Gandhi had promised self-government in one year, and everybody thought that it was a very good thing to have. That is why the Swarajists and the Congress people and the other parties came into power. They were elected in order so to work as to gain self-government within one year.

THE HONOURABLE MR. G. A. NATESAN: This is the first step towards it.

THE HONOURABLE MR. G. S. KHAPARDE: This cannot be a step towards self-government. Suppose you marry your daughter at 16. Would that give you self-government immediately?

THE HONOURABLE MR. G. A. NATESAN: That will bring us nearer it.

THE HONOURABLE MR. G. S. KHAPARDE: It has nothing to do with it. Self-government is a different thing.

THE HONOURABLE SIR MANECKJI DADABHOY: That would serve you as a qualification for self-government.

THE HONOURABLE MR. G. S. KHAPARDE: It is not self-government. It is not a qualification. I could not understand the attitude of the people myself, and I never believed it. But still, they thought that by a miracle Mr. Gandhi, who was supposed to be a Mahatma, would be able to work a miracle and we would get self-government in one year. So, people have come here with a view to getting self-government. But what have they done? This business is destroying what little is left of the glory of my own country.

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If this is self-government, I congratulate you upon getting it at once. The fact remains that this was not a live question at issue when the elections took place. These people did not have a mandate to make laws about religion. When they wanted to make a small alteration in the Prayer Book in England, we know how long it took before the Parliament could do anything, and the cry was raised that these people were not there to decide about the Prayer Book and that they were elected on certain issues and on those issues only could they legislate. Again, in England, when there was the question of marrying a deceased wife's sister, it took 50 years to get that legislation through the House of Commons. Is it intended that in India the law of inheritance and the law of marriage should be altered in one day? I cannot understand it. It is unconstitutional. In England, Government was always a Government by the majority in the House of Commons, but they remained neutral when this question of altering the Prayer Book came up. Why, then, when the marriage laws are being discussed, do Government side with them in the other House, and also with them in this House? I put that plain question. If this child marriage was so bad, how is it I have survived all this time? China is looked upon as a sort of place where all sorts of undesirable things take place, but it is in the best position that I know of. They have survived; they have not died. Why is it then that all these laws are being enacted in this country? My argument on this point is that this is unconstitutional. Our people speak of liberty and independence and self-determination. When it comes to its being applied, they say that this law should be thrust down the throat of all these people by legislation. Whoever seeks the help of Legislatures to carry out his ideas is, I humbly submit, an autocrat at heart. He is not a Liberal. A Liberal is one who claims liberty for himself and allows it to others. Like Christ who preached his doctrine. They did not believe him and he preferred to be killed. Similarly, the reformers in this particular case should have adopted the attitude: "Look here, this is a very good thing; you should follow it; I shall also do it. I shall go to my own people and explain the matter to them. I shall explain the difference to them and convert them to my views". The person who says that is a Liberal. One who seeks to thrust his ideas on others with the help of authority and power is not a Liberal, whatever else he may be. So, in this particular instance, Government have rendered assistance to the other party and they have acknowledged it with great gratitude. I say they are not Liberals. That is my first point that this is unconstitutional. It is an unrepresentative Government masquerading in the form of a representative Government. In my part of the country, up to this time, not a single reformer has dared to preach this doctrine. So far as I know, nobody knows anything about it. It is easy enough to frame a Bill, secure Government sympathy and pass it in the House. The man then becomes immortal. But that is not a liberal Government nor is it a representative Government. So, that is my first point. (*An Honourable Member*: "The second point, I hope".) It is not the second, if you please. I put down under the head "unconstitutional" so many things, and I have mentioned them now to you.

The second point which I wish to mention is this. There are conventions in politics. Everything is not regulated by laws or rules. There are certain conventions which we observe. Now one of the rules which are not laid down but which are observed everywhere is this rule of which I was speaking just now.

THE HONOURABLE SIR MANECKJI DADABHOY : You had finished that.

THE HONOURABLE MR. G. S. KHAPARDE : My dear friend, if you will

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THE HONOURABLE THE PRESIDENT : Order, order. The Honourable Member will kindly address the Chair.

THE HONOURABLE MR. G. S. KHAPARDE : I do not mind interruptions. But I simply mean to say that they are destroying religion, religious customs. I have complained already about it, and to-day I mean to put it more strongly. This process of abolishing one thing at a time is not right. First came the law of the age of consent. That was in the nineties of the last century. I myself was in sympathy, but I thought that they should do this with the aid of the reformers and not with the aid of the law. That was my position then, and the same is my position now. I will not give you an autobiography of myself to show what I have done. I am for carrying them out myself, but am not in sympathy with the reforms being carried out with the aid of the law. There are many reasons, but one of these is that in domestic matters, it is not desirable that strangers or officers should have any right to interfere. Let it be my own affair. It is a domestic matter. I will do it myself. It was urged here by some people that marriage is not a matter of religion at all and that it is a social matter. It is purely a social matter. Well,

3 P.M. I was glad to see that my Honourable friend Mr. Ramadas considered that it was religious and that it was a domestic matter. But his supporters here have gone a little beyond that and say this is not a religious matter at all, and the argument was that nobody says the marriage will be null and void but the man who performs it will be punished, and that is not going against religion or destroying religion. That reminded me of a book I read in my younger days, when the question of *Sati* was being argued. People went in a deputation to the then Viceroy.....

THE HONOURABLE THE PRESIDENT : I hoped that the Honourable Member had finished with *Sati* under his first point. I must ask him not to go back to it again.

THE HONOURABLE MR. G. S. KHAPARDE : I mentioned it, Sir.....

THE HONOURABLE THE PRESIDENT : The Honourable Member is requested by the Chair not to mention *Sati* again. He dealt with it very fully under his first point.

THE HONOURABLE MR. G. S. KHAPARDE : I was mentioning, Sir, that.....

THE HONOURABLE THE PRESIDENT : I am not inquiring what the Honourable was going to mention. Will the Honourable Member please continue his speech.

THE HONOURABLE MR. G. S. KHAPARDE : My point in that matter was that to render a thing punishable is to prohibit it, and when you punish a person who gets married or allows persons to be married at a particular age, it means that it is prohibited by law, and to that extent it certainly is an interference with religion. It is not only religious with me. With due deference to these learned Muhammadan gentlemen who say it is a purely social matter, I submit that it is still a matter of religion with them, and for this reason, that

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during the performance of the ceremonies certain portions of the Koran are read by the bride and bridegroom.* If it is not religious, why are these *Kalmas* read? They say it is not necessary. I say it is necessary. Muhammadan law prohibits a man from marrying more than four wives, and if he wants to have a fifth wife, the Ulemas will not permit him to do so. Then again, if he has a wife and wants to marry another, he has to treat both equally well, and if he is not able to do that he ought not to take a second wife. If a Muhammadan ill-treats his first two wives and wants to marry a third, the Ulema will have something to say to that. So it comes to this, that marriage is clearly a religious matter which is regulated by immemorial usage by Muhammadan law, and it is as much a religious matter with them as with the Hindus. A further point in that connection is that Muhammadan law favours monogamy. It does not like polygamy and the proof of that is that the *mehar* or dowry which is given to every wife who is superseded is purposely made very high, in order to prevent a man taking another wife. In that way Muhammadan law has endeavoured to introduce monogamy; when it was first introduced, polygamy was the custom, and, in order not to upset things too much, they placed this restriction upon it. So I submit, Sir, that with both the Hindus and Muhammadans it is a religious matter. To go on further with that. How can you say that it is a purely social matter? It is not so with Christians or Jews. It is not so with Roman Catholics, nor even with Protestants. In the Orient more or less, and especially in India, marriages are not elective among the Brahmins and the Muhammadans. A Brahmin, after he reaches the age of eight, has to have the sacred thread given to him. In the case of a girl it is the betrothal which takes the place of the sacred thread. That is done as a religious obligation on the part of Brahmins. Among Khattriyas for a long time they have had elective marriages and marriages are contracted at a very late age. So it was permitted also to the Vaishyas and Sudras, and the persons who really labour under the disability most by their religion are Brahmins and Muhammadans. I will not speak more about it because I have got a separate amendment and when that is reached I shall explain the matter further. So that contention about its not being a religious matter cannot possibly be upheld. What we are afraid of is that once you make this a purely social matter, it will become something like a contract, and you can marry to-day and repudiate it to-morrow and marry again and go on repeating that merrily. I am told in America there are ladies who have been divorced 20 times. That may be so, I do not know, but I do not want that sort of thing to come into my society and I will do my best to avoid it altogether. Marriage is not a pure contract or purely a social matter. Those are the two points which I wish to labour and which I have laboured. Some go further and say that civilization is advancing and in India nowadays we get the final result without the initial stages. So when the railway came to India I rode in a locomotive and I did not know a word about it, nor do I even now. Aeroplanes have now come and no one understands them. In the same way reforms come in. In Russia reforms have come with a rush and they have very nearly abolished marriage. Is that also going to be our fate? They have trial marriages in America. Is that to be introduced here? But once it is looked upon as merely a matter of contract we cannot object to it and cannot prevent it, though I know that

that will upset my society in such a terrible way. I am afraid of taking a single step which may lead to such a conclusion. I want to preserve the fabric of my society as it has been preserved in the past. These are new things, and young men take easily to new things. Take, for instance, the Bolshevik. I suppose the Government are really paving the way so to say to make young men adopt that course. And the point is this. If marriage is to be turned into a social matter altogether by law, are the Government willing to prescribe any forms in which it is to be performed? Is it to be performed before a Registrar? What are the forms in which this marriage will be carried out? Would it be like what it is in Russia? There you meet a woman and you say, let us be married, and she says "yes" and the thing is done. Then you say to her, "I divorce you", or she says it to you, and the thing is done. I want to understand what the position will be. That is why I ask these questions. If you take away all that religion imposes, if you take away all that usage and custom lays down, what do you give in its stead? Is it to be a mere contract to be signed in the office of the Registrar? How are you going to work it? This is an absolutely unworkable law, at least in the present state of society. People in fact can never rise to the highest point of intelligence as a whole—so high as to decide legal doctrines such as this Bill creates. So, I submit, this Bill is unconstitutional and not in consonance with the genius of the country. It is not practicable. How is it then to be carried out?

The further ground on which I oppose this law is this. I believe it was mentioned in the other House that others are laughing at us and hold Indians in poor estimation and therefore our laws have to be improved to the standard of the world that is going on. I submit that this is a dangerous doctrine to introduce, dangerous because in this world there are people who will always object to you, no matter what you do. As the old story goes, a man and his son were going to sell a bullock; the son was riding on the bullock and the father was following on foot. So, one man said, "Young man, you ride and yet your father walks?" The son got down, and the old man was put on the bullock. Then another man said, "Old man, you ride and your son walks?". Then both of them were walking. Another man said, "Why don't you both ride?" So both the father and the son rode. Then they were told, "How cruel you are?" Yet another man said, "Why don't you both carry the bullock on your heads?" The consequence of this was that they got wounded and the bullock went away. If you listen to every criticism that is made about you, there will be trouble. I mention this argument because it was mentioned in the other House and a great deal of discussion took place on that. I also say that marriages will have to be elective; at present among the Hindus, or Brahmins at any rate, and Muhammadans, the bride and bridegroom do not meet before they are married and there is no election or any preliminary thing. If they grow up, then we shall have to make room for the further parts of it, for the bridegroom and the bride meeting and liking one another, and so on. Then, if marriage becomes elective, you will have to provide for divorce. At present there is no divorce among Hindus. It may be separation or divorce as the case may be. There are other portions of the Bill also. All that trouble we will have to take. I have wandered through a small portion of the world. Whether marriage is elective or whether it is done on the advice of the parents, if you take an inventory of

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happy people, it will come very nearly to the same. It does not go beyond that. Now, let us analyse the thing. What are the central doctrines on which this change is based? The doctrine, if the pair marry young, then the child is bound to be very weak and the nation will deteriorate. That was urged; I believe it was talked about. There are three books on the subject which I want to mention, namely, Westermarck's "History of Human Marriages", Latournean's and Havelock Ellis' "Studies in the Psychology of Sex". These are books written by very great men on this subject specially, and I should have liked my friends who are putting forward this reform to have quoted from them. At present it is said that these early marriages deteriorate people; they are bad, and so on. When people base their conclusions on science, I rather become a little nervous, because science changes things very fast. In my younger days Dalton's theory of the atom was taught to me with great care. To-day nobody would like it, because there are no atoms, but there are electrons. What are those electrons? What is electricity? Nobody can define it. Similarly in many other directions I can give you illustrations of how things change. Jagadish Bose's researches have changed a great deal of biology. P. C. Ray's researches in chemistry have changed a great deal of the opinions of the present day, and I am afraid they will change very fast. I have specially taken note of the opinion of Havelock Ellis. Unfortunately I have not got the book to read out the original, but fortunately for me, it has been referred to in a petition which I gathered at the other House. We find Havelock Ellis in his "Studies in the Psychology of Sex" says:

"That science and observation both support the ancient Indian view that girls become fit to be mothers on the first onset of menstruation, and that abstinence after attainment of puberty is fraught with the most disastrous consequences."

Medical opinion is that when females attain a certain age when they are subject to certain physical conditions, they become at once fit for motherhood. That is the doctrine of the ancient Hindus as well as the doctrine of Muhammadans. The opinion which I have quoted is the strongly expressed opinion of a great scientist. Therefore, the law among the Hindus that marriage should be consummated on the girl attaining puberty, and in the case of Muhammadans as soon as the girl attains that age, is based on sound medical principles; and until I hear arguments to show that the opinion of Havelock Ellis is wrong, I for one will not be convinced that our custom is bad. If anything, our custom appears to be good. In the Census Report, which is not written by any doctrinaire person, but which merely ascertains opinions, you find this passage:

"In Burma where there is on child marriage the rate of infant mortality is higher than that in Bihar and Orissa where child marriage prevails...."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: That may be due to other causes.

THE HONOURABLE MR. G. S. KHAPARDE: They say that child marriage tends to shorten the life of people; it is said that the mother dies,

the child dies, or is weak, and so on. Here is the Census Report which says that it is not so. It goes on :

“ In Lower Burma the rate of infantile mortality is about 24 per cent. In Chile it is about 32 per cent. In Hungary 30 per cent., in Russia 25 per cent. The general average for India is 20 per cent.”

Now, if infant mortality in India is only 20 per cent., where is the medical argument that has been urged that by your early marriages you increase mortality? Where does that come from? How is it supported? I should like to have here on the floor of this House arguments on this point, but they have not been urged. They go on talking on general considerations and general assumptions. Page 303 of the Report of the Census Commissioner, Mr. O'Malley, who himself had certainly a very strong prejudice against child marriage says :

“ In spite of the general prevalence of early marriage, the percentage of feminine mortality to male mortality is 89 in Bihar and 91 in Bengal, as against 95, the average in other countries.”

Now, how does that come to be? The other mortality is less. The child mortality is less. In fact, if you will permit me, Sir, I will cite two instances : King Edward the Third, and the Black Prince is one. The Black Prince was born when Edward III was only 18 years of age. He was the product of a child marriage. Our own Sivaji was the product of a child marriage. Where then is the justification for the plea that child marriage is so terrible that it must be put down by law? Great persons in history were born of child marriages. I say an ounce of fact is worth a ton of theory.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : What was the physique of their parents?

THE HONOURABLE MR. G. S. KHAPARDE : Well, King Edward III existed such a long time ago that I never saw him. I am told he had a good physique. So had Sivaji's father. So physique has got a great deal to do with the age. When this question is put to me, the point is not that they want to argue in favour of age but argue that physical conditions determine everything. There are two kinds of cells in the human body. One set of cells go to build up the body and the other set of cells go to reproduce it. These two kinds of cells are totally independent of one another. The defects in the one are not reflected in the other. And those people who want to argue that, because of the age or the want of development of the mother, the child is bound to be poor and weak, the onus of proof lies on them. I depend on the opinion of Dr. Weissman and Havelock Ellis. There are two sets of cells and they are independent of each other. And if you do not mind it, I will try and read a sentence or two :

“ Dr. Weissman has proved that the reproductive cells are independent of the somatic cells which build up the body, and that all that can be said is that if the parents are weak and sickly—specially the mother—the germ cells may be arrested in their growth, and this would be so whether the parents are young or old.”

The youth or the age of the parents has very little or nothing to do with it. If that is the opinion of doctors—I am a layman in this subject, but I wish that the doctors here or the doctors in the other place had argued these matters to convince me. Merely reciting opinions and repeating them will not do.

THE HONOURABLE DR. U. RAMA RAU : We will argue when the time comes.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Is it not a fact that the physique of the people has gone down very considerably ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : That is due to other causes : not to early marriage.

THE HONOURABLE MR. G. S. KHAPARDE : My point is that these matters have not been argued. I should like to hear more arguments and more facts adduced. As far as facts have been adduced, they do not support their theory that infant marriage is necessarily injurious or that females after attaining a particular age ought to be made to abstain from motherhood ; that they should be prohibited from performing their functions. Well, that, I submit, has not been proved, and therefore, I submit, that this legislation has been undertaken on the wrong basis and on wrong assumptions. And it is sought to be put forward and argued in a peculiar way. In the other House, all manner of questions were argued and they went into all kinds of arguments. Here we stick to our own arguments, and to justify the Bill they have not produced anything. On the contrary I have produced enough to show that it is not good.

Further I would urge that all civilisation and reform have got to have some relation with what has gone before. In other words, I am a historical Liberal as it would be called in England. I like to be in contact with the previous history, and any improvements that are brought in have to be my own, just as English people when pronouncing our name anglicise it. Similarly, improvements that are adopted by us ought not to be bodily adopted but grafted into our system and our system must assimilate it. If the food which I eat was tied on my back as a load, it would be of no value : I have to convert it into blood. Similarly, these improvements, if they are necessary and if they really are very good, have to be given to me in small doses and in such doses as I can digest and as I can make into elements of strength. Mere imitation—because such and such a person does so therefore I do so—is no argument at all. So within one year we say that marriage and inheritance and everything is going to be reformed. This is going too fast. Somebody referred to Turkey and Persia and other countries that were moving forward. I am sorry they did not mention what it has led to in Afghanistan. Hurry in reform has not resulted well in Afghanistan. So hurry in not wise, is not good even administratively. And at the present juncture when everybody is more or less excited about this matter, I am really in sympathy with the motion for deferring it for some time. Let people have time to read and understand and argue. And then, they might see the wisdom of this or not. If they do, the reform will be carried out. If they do not, that is a good reason why it should not. So I am not anxious that the law should be carried out at once and imposed so to speak at the point of the bayonet. I like that our people should have time. The reformers have not yet invaded my country or talked about this matter. Let them have time to come and do it. I am myself in sympathy with it and would help it. But I object to its being driven down the throats of the people who understand nothing about it by the strong arm of the law. These considerations, Sir, I wish to urge at this stage

because the question now before us is whether the Bill ought to be taken into consideration. I say it ought not to be taken into consideration. It has been passed rather hastily—passed after they had appointed a Committee. On the Committee there was not a single orthodox representative, not a single Muhammadan Ulema either. There was not a single Muhammadan theologian. How did they pass it? Even the evidence recorded before the Age of Consent Committee has not been published I am told. And I ask the people—Why? They are people of such extraordinary good characters that I have got to take their word for this. I would like to see that evidence, Sir. I would like to see whether their conclusions are borne out by the evidence that was recorded. That evidence has not even been published.

They say, the Committee have examined so many witnesses. I have experience of examination of witnesses. When a person makes a deposition, then it is only by cross-examination that you can find out points in favour of yourself. In the case of other Commissions, the members of the Commission cross-examined witnesses to bring out points in their favour. In this case, there was no single orthodox man on the Age of Consent Committee. There was not a single Muhammadan theologian, there was not a single Sastri. Not that Government had no materials to go upon. There is the Hindu Maha Sabha, there is the Sanatan Sabha, and there are the Anjumans and colleges for the Muhammadans. Why could they not have been asked to have a seat on that Committee and give their opinion? These people would have cross-examined the witnesses and brought out the points that ought to be brought out. Here, it was an *ex parte* proceeding. The reformers only put questions which were favourable to themselves and recorded them, and I am asked to take this evidence as gospel truth.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Was not Rai Bahadur Kanhaya Lal, a Sanatanist and an orthodox man, a member of the Committee?

THE HONOURABLE MR. G. S. KHAPARDE: I have not the honour of knowing him. I know that he is not a Sastri nor a Sanskrit scholar.

THE HONOURABLE SIR MANECKJI DADABHOY: He says he is an orthodox man.

THE HONOURABLE MR. G. S. KHAPARDE: That is not enough. Both parties must be equally balanced or very nearly balanced. This Committee should have had something like equality of members so that there might have been somebody to judge impartially between them. That has not been done.

THE HONOURABLE MR. G. A. NATESAN: But the most heterodox Brahmin often poses as the exponent of an orthodox Brahmin.

THE HONOURABLE MR. G. S. KHAPARDE: I beg your pardon.

THE HONOURABLE THE PRESIDENT: Will the Honourable Member continue his speech?

THE HONOURABLE MR. G. S. KHAPARDE: My point was that these conclusions of the Committee, which have been made much of, are really from our point of view not worth the paper on which they are written. Cross-examination has not been made of the witnesses.

THE HONOURABLE THE PRESIDENT : The Honourable Member has said all this over and over again. I find it very difficult to call the Honourable Member to order, because his remarks are in order, except that he is most sadly repeating himself. With regard to the report of the Committee to which he is referring, he has told the Council five or six times that it is an *ex parte* record.

THE HONOURABLE MR. G. S. KHAPARDE : We will leave this Committee alone, Sir. I will now come to how it was constituted. In the other House, there is not a single.....

THE HONOURABLE THE PRESIDENT : The Honourable Member having now spoken for an hour, I will again ask him which point of his argument he is dealing with now. I tried to follow them and put them down for my own benefit but I have not the least idea which of his seven points he has arrived at.

AN HONOURABLE MEMBER. The last one.

THE HONOURABLE MR. G. S. KHAPARDE : I am sorry, Sir, I have taken one hour. I did not know that I had taken so much time.

THE HONOURABLE THE PRESIDENT : The Council is aware of the fact.

THE HONOURABLE MR. G. S. KHAPARDE : I was looking this way and not that way. I shall try to be as brief as I possibly can. I have taken down some of the arguments that were put forward here as I thought they required to be answered. I have answered about the help which the Honourable Mr. Ramadas Pantulu has received from Government. He said this was a corroding evil. I reply to it by saying that we have survived 14,000 years and it could not be a corroding evil if we have survived. He said that inroads have already been made by the Legislature, and he quoted many instances. That is exactly what I object to. Piecemeal legislation is not desirable. Then he mentioned about *Sati*, to which I have replied. He has again said something, which I thought was in my favour, though he said it as being in his favour. He said that 50 per cent. of the marriages are of girls above the age of 15. If that is so, where is the necessity for this legislation? If it is so, then it is not such a widespread evil that it requires to be looked into at once. English education and civilisation are working without any legislation being introduced. We are gradually drifting into the ways of the West, and we are allowing our girls to grow much higher and higher. Civilisation and reforms are being silently carried out. If 50 per cent. of the marriages are above 15 years of age, I humbly submit that the necessity for this Bill disappears. That is an admission from the other side.

One point which perhaps I ought to have made earlier is that in India, as elsewhere, we make a distinction between a betrothal and a marriage. In the case of girls in Brahmin families there is a form of betrothal which we call the preliminary marriage, but it is really a betrothal proper. When she attains maturity, then comes the consummation of the marriage. That is the real marriage as described in Western language. I think this reform is more directed against the consummation being carried out earlier. For that end, there are laws already. I do not know why that right of betrothal should be put down by the strong arm of the law. I do not want to speak much about it now, because later on I will get an opportunity of speaking about it.

THE HONOURABLE SIR MANECKJI DADABHOY : This clause does not prevent it.

THE HONOURABLE MR. G. S. KHAPARDE : That will be a difficult point and the Honourable the Law Member may be able to enlighten us on it. We have been calling it marriage up to this time.

THE HONOURABLE SIR MANECKJI DADABHOY : It is not marriage.

THE HONOURABLE MR. G. S. KHAPARDE : If you will put it down that that form, at present gone through at the age of 8, is not marriage, but betrothal, I shall be glad. If somebody will do it, it will be good. Otherwise, it becomes a difficult question. How can I possibly know how it will be decided afterwards? That is one of the difficulties that the law is declared by the Judge afterwards.....

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : My friend being a lawyer of great experience knows that betrothal is not marriage.

THE HONOURABLE THE PRESIDENT : Will the Honourable Member kindly continue his speech and ignore interruptions?

THE HONOURABLE MR. G. S. KHAPARDE : Thank you, Sir. I will ignore all these interruptions. Imagine putting questions to me like that! Then the last head is general. That means that the canons that have to be observed when reforms are to be introduced and carried out have not been observed in this instance. No notice was given of this legislation, and it has been sprung on us, so to speak. I therefore strongly object to it, and say that this Bill should not be taken into consideration in this House.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, I am thankful to you for giving me an opportunity at this stage to explain my position to the House, because I am responsible for giving notice of a number of amendments to the Bill itself. I am not going to emulate the previous speaker either in length or in the discussion of the various subjects he has dealt with. I shall be as brief as possible. I may say at the very outset that I am in complete agreement with the fundamental principle underlying the Bill. It is only with regard to some specific provisions of the Bill that I think this Council ought to go into—I am not now going into those matters, Sir. The first question that has been raised is that our religion is in danger, and when I speak of our religion I am not for the moment referring to the Muhammadans, because I do not claim to know sufficient either of the Shariat or of their ecclesiastical law to speak about it. But so far as our religion is concerned, the Hindu law has been recognized from the very earliest times to be one of the most progressive of laws which adapts itself to changing circumstances in the course of the different stages of the country's progress. It is not unknown to Members of this House that we may if we like find out passages from different Shastras which are absolutely contradictory to each other. It is possible to find a passage saying that a girl ought to be given in marriage before she completes the age of 9 or 10, or at least before she reaches the age of puberty. At the same time you can find passages in our Shastras in which just the contrary view is expressed, that a girl ought not to be given in marriage before she attains puberty. Sir, it has been repeatedly stated, and there have been various discussions over that question

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as to which is the proper rule which we should follow. So far as we are now conditioned we know from statistics that half the girls in India are married after the attainment of the age of puberty, and the other half before that age. Sir, if we analyse the different classes of persons who give girls in marriage before the attainment of puberty, we find that either they are some of the higher castes in some, not in all, provinces and some of the lowest classes in society. I do not mean any disparagement when I say the lowest classes in society—I mean those who go by the name of Namasudras and others in Bengal and who occupy the same position in other parts of India. They generally give their girls in marriage before the attainment of puberty. That is due more than anything else to an economic reason, because among those lower classes the number of females is less than the number of males. The result is that a certain sum of money has to be paid by a man before he can expect to get a girl in marriage. Therefore generally a male cannot get married until he attains the age of 30 or 35, and even later, whereas a girl is given in marriage in that society quite early—it may be at 6, 7 or 9 years. There is a great disparity in age there. That is why I say that I am in complete agreement with the fundamental principle of the Bill that there ought to be a law prohibiting a person from giving his girl in marriage before she attains a definite age, but with proper safeguards.

Sir, it has been stated that Legislatures, at least the Indian Legislature as it is now constituted, ought not to dabble in these social and socio-religious matters. But what is the other alternative suggested by the opponents of this Bill? In olden times there was a society and there was a power behind society which could enforce the rules of society. But at the present time we know that society is being disintegrated owing to western influences, economic conditions and various other causes, and where is the body which can now enforce a rule about a law of marriage? The first question is, should there be a law of marriage or not? And the second question is, if there is to be a law of marriage, should it be left to society itself to regulate its activities in a way that a law will be evolved in course of time, or should it be passed by the Legislature as a definite law so that the object we have in view may be precipitated? Sir, I think, the Indian Legislature is certainly elected mainly on political grounds; the persons who go to the different Legislatures go there mainly by virtue of their political opinions. Therefore, the religious or social side of society is not adequately represented in the Legislature, as we should like it to be when the Legislature is called upon to pass a Bill of this description. But at the same time, to make the best of a bad bargain, you cannot but agree to legislation even on this question by the Indian Legislature.

The next question which arises in this connection is that if the age of marriage is raised in this way by legislation, what will be the effect on society as it is at present constituted? I must express my disapproval of the way in which the Bill has been passed through the other place and the way in which the Assembly refused to take any note of all the recommendations of the Age of Consent Committee. I think that this House would be better advised if the recommendations of that Committee are taken into greater consideration by this House. I do not for one moment suggest that all the recommendations of the Age of Consent Committee are sacrosanct and cannot be questioned; I

would call into question the way in which the Committee has gathered opinions—more like an one-sided enquiry—about the age of marriage. But still in spite of that fact, in spite of the fact that the opinions that have been gathered by the Age of Consent Committee, the Legislative Assembly has not profited by the recommendations of that Committee. Sir, when legislation of this kind is being thrust on the people, every attempt ought to be made to see that it is to be given effect to in the best possible way. I am sure every advocate and supporter of this Bill would like to see that the Bill is effective and not a failure. It has been openly stated by some that the Bill as drafted is defective in many ways but an amending Bill would be brought in later on. It has also been stated that the Bill as drafted will have to be passed during the present Session of the Legislature and given effect to from the 1st April 1930. Sir, that is a different question which we may take up when we come to the clause concerned. But what steps have been taken either by Government or by the sponsors of the Bill to include within this Bill the conditions which were thought by the Age of Consent Committee to be absolutely essential? It is no use fixing an age for marriage without providing for the exigencies which would arise out of that rule. Take, for instance, one case. We find, at least in Bengal—I cannot speak for other provinces—that girls are now being sent to schools and are being educated much more than they were, say, 10 years ago. But we have not got a sufficiently large number of institutions to educate even the limited number of girls who are ready to take advantage of the educational facilities provided. When you are going to enforce this age rule of 14, what additional educational facilities is Government going to give in the different provinces? I know as I am intimately connected with educational activities in my own province and I can speak with authority that, in spite of the very large number of girls' schools started during the last 10 years in my province, the girls cannot find adequate accommodation in girls' schools and girls are being admitted into boys' schools at different district headquarters. That is a state of things which ought to have been taken into consideration. I would like to have a statement from the Government side as to what additional educational facilities Government would provide for girls. When the girls are not being allowed to be married at the age of 12 or 13 and have to be kept unmarried till 15, then there must be some work given to them during their unmarried stage, and what is the occupation that will keep them busy? They must be employed in some way or other, and I think educational facilities are the only definite suggestion which can be made and which would meet the difficulty in this case.

There is one other point that I want to mention. It has been suggested that unless and until the age rule is modified at once, we cannot survive as a nation. I would not go into that sweeping assertion at all, but there is one passage in the Age of Consent Committee's report, which I think ought not to go unchallenged. Sir, when the Committee was considering the question of maternal mortality owing to the immature age at which they have to give birth to children, at page 163, the Committee analyses the reasons and formulates the important and relevant conclusions, and their conclusion No. (3) is as follows :

“Economic conditions do not seem to have any relation to maternal mortality, but seem to have an inverse relationship to neo-natal mortality (*i.e.*, of infants within the first 8 or 10 days).”

[Srijut Rama Prasad Mookerjee.]

I would enter my protest against such a statement finding a place in a report which is signed by persons of the eminence of those who were members of this Committee. To say that the number of deaths either of children in the neo-natal stage or deaths of mothers during the period of confinement is not due to economic conditions, to put it in the mildest form, is a travesty of the actual state of things. Sir, the economic condition of the country is certainly mainly responsible for the present state of things, because there is no use denying that the age of marriage was still lower than at present 50, 60 or 100 years ago. In spite of that fact, what was the mortality in the different parts of India? We have no detailed figures, but we have descriptions given in the different reports, official and non-official, and we find that the deaths of children in the neo-natal stage or deaths of mothers in the period of confinement have increased of late. If that be so, you cannot shut your eyes to the economic condition of the country. As was correctly stated by my Honourable friend Lala Ram Saran Das, the vitality of the people in the different parts of the country is going down mainly owing to economic conditions. (*An Honourable Member* : "That is not the only reasons.")

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : The Gauna system which used to take place four or five years after the marriage has now gone out of actual existence or practice.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : The Gauna system was not in existence in Bengal. It was in the United Provinces and the Punjab that the Gauna system was in vogue. Although there were different *samskaras*, the Gauna system was not enforced even 100 years ago, not to speak of 30 years ago.

THE HONOURABLE MR. G. A. NATESAN : But in Bengal you have consummation before puberty.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : If my Honourable friend would give me facts, I would certainly meet them, because it has not been said by the Age of Consent Committee that consummation before puberty is in vogue in Bengal but it is marriage before puberty, which is different. No body in his senses would support consummation before puberty. Nobody has up till now done so, whether it be by the oldest Shastri or by the most veteran of Pandits of the present day. That is the exception rather than the general rule. Sir, what are the facts that have been culled by the Age of Consent Committee from the hospitals and the maternity homes? Those are the sources to which one looks not for the normal state of things in society but for the abnormal state of things in society. I should have thought that my Honourable friend Mr. Natesan would have considered that point with reference to the figures that have been put forward by the Committee. He is a journalist of eminence and he ought to have read those figures much more carefully than I may be expected to do.

THE HONOURABLE MR. G. A. NATESAN : Facts and figures.

THE HONOURABLE SIR MANECKJI DADABHOY : May I correct the Honourable Member by reading a passage about Bengal from the Committee's Report?

"Witnesses may praise or condemn the system....."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: What is the page?

THE HONOURABLE SIR MANECKJI DADABHOY: Page 67.

"...and may refer to the advantages or disadvantages accruing from it, but the fundamental fact is undeniable, nor it is questioned, that early consummation almost inevitably follows early marriage amongst both Hindus and Muslims in Bengal."

THE HONOURABLE MR. G. A. NATESAN: It is reiterated in several other places also; I would not waste the time of the Council with citing them.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: What was the evidence that was produced before the Committee? I stated in the very beginning that it has reference only to hospital registers and similar other places. What was the number of orthodox people or of the people in the innermost parts of the different places who placed the real facts before the Committee? No doubt a statement appears in the report that an attempt was made to get orthodox opinion, to get at the real state of things in the innermost parts of the provinces, but it was not enough for the Committee to visit the towns only in the different provinces and get at the state of things there. It is not from the towns themselves, but from the innermost villages of each of the provinces that you will get the real state of things, and I would challenge any Member of this House—and the evidence has not been published so far as Bengal is concerned—to find out and prove that in Bengal consummation is the rule before puberty is attained. I would like to have a reply from any Honourable Member. Is there any evidence within this report or outside it? I do not know if any Member of this House knows—no Member of this House happened to a member of the Age of Consent Committee. Therefore, Sir, I still maintain that the law ought not to be fixed with reference to the abnormal but keeping in view the general state of things in society. As I began by saying that I want a rule to be fixed, I want an age to be fixed, but at the same time, let us, as practical men, formulate such a law as would be possible for the executive or for the authority concerned to enforce it in every part of the country. I am sure it is not the intention, as I have already said, that it should be a dead letter. I was surprised to hear the other day from a very prominent Member of the other House that this Bill would have merely an educative value, it is not expected that this Bill, when it becomes law, would be given effect to, the penal measures will not be applied. I was surprised to hear that. Either you pass the Bill into an Act and take all the consequences arising out of the Act or you throw the Bill into the waste paper basket; and once you accept the position that you ought to have a Bill in a practical form, I think it would be up to this Council, this revising Chamber, to take into consideration the different clauses of the Bill and find out which of them requires amending—in what way we ought to give it a practical shape.

THE HONOURABLE MR. P. C. DESIKA CHARI: Sir, I am opposed to the principles of this Bill, though I am very much in agreement with the object with which the Bill has been brought. I am in favour of raising the age of marriage of girls and these Shastraic injunctions one way or the other do not appeal to me. As my friend, Mr. Ramadas Pantulu, has pointed out to-day, we claim to be Dharmagnas. And whatever is conducive to the best interests of the nation,

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to the best interests of the Hindus, we are entitled to incorporate in the rule of Dharma. That is my position. I may at the outset inform the Members of this Council that I hail from a province in which this Bill would have no operation at all. There is absolutely no infant mortality in Burma and there would hardly be any case to be dealt with under the Act if passed into law. I say this, not only with reference to the Burmans, the indigenous population there, but with reference to the various classes of Indians and others who have gone there. This very strongly appeals to me and I would request Honourable Members from various other provinces to bear in mind that what was possible for the various classes who have recently gone to Burma to do by the healthy growth of public opinion can also possibly be done in other parts of India. If really those who cry themselves hoarse over social reform and protest to be zealous over social questions, if they would really agitate and do a little propaganda work in this country, things would soon right themselves. I am sorry to say that during the last 100 years no attempt has been made to educate the people in the various parts of the country, especially in the innermost corners of the country. But as Pandit Kanya Lal puts it in his minute of dissent to the Age of Consent Committee's report, no attempt has been made by the Government to give any sort of general education to the people of the country or to do socialistic propaganda work, to tell the villagers that in the interests of their progeny it is harmful to have early marriages and early consummation of marriages. If this propaganda work had been done, there would have been no need to rush through a Bill, to try to force down the unwilling throats of people who are ignorant, people who cannot appreciate the good offices of the reformers, a piece of penal legislation with a view to bring about the desired result. I am afraid that even if this Bill is passed into law, unless there is very great propaganda done in the different parts of the country, the law would either be a dead letter or it would be disobeyed on a very large scale. Because no body of persons are willing that what they regard as an ancient and inalienable custom, for which they have the highest regard, should be tampered with by other people who are not of them. Here there is an attempt to undertake legislation dealing with the religious sacraments of the Hindus and the personal law of the Muslims.

THE HONOURABLE SIR MANECKJI DADABHOY : No.

THE HONOURABLE MR. P. C. DESIKA CHARI : There is an attempt to interfere with the Shariats of the Muhammadans.

THE HONOURABLE SIR MANECKJI DADABHOY : No.

THE HONOURABLE MR. P. C. DESIKA CHARI : Rightly or wrongly, whatever may be the modern conception of marriage under the Muhammadan law, whether it is regarded as a pure contract or not, the fact remains that the Muhammadans regard the Shariats to be the only law applicable to the case of marriages among the Muhammadans. That being the case, my real difficulty, though I am very anxious to raise the marriageable age of girls, is this, that if you accept the principle you accept the large claim which is now put forward that a foreign Government having a different religion from yourselves, supported by a heterogeneous Legislature, would have the right to interfere with the delicate human relationship in domestic matters.

THE HONOURABLE MR. G. A. NATESAN: That is unfairly stated.

THE HONOURABLE SIR MANECKJI DADABHOY: The Bill has been brought by a Hindu Member. •

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Is it not the duty of the Government to look after the health and the physique of its subjects?

THE HONOURABLE MR. P. C. DESIKA CHARI: I shall deal with that later. I am only concerned with the higher aspect of the outcome of the acceptance of the principles of the Bill. Sir, there are Muhammadan friends who will take care of the Muhammadan religion. So far as the Hindu religion is concerned, it cannot be gainsaid that the Hindu marriage is a religious sacrament. We know what are the essentials of Hindu marriage—it is purely and simply a religious sacrament. The Honourable Mr. Khaparde has already pointed out that marriages in India in the sense is different from the sense in which that word is understood in the countries of the West. It is a mere betrothal and is regarded as a sacrament, and that is enjoined by the Hindu religion to be done in a particular manner. The argument that the present Bill does not affect this religious sacrament has been very well answered by the Honourable Mr. Khaparde at very great length and it is not necessary for me to go into that again. Well, what then is the position? When a claim is put forward to interfere with the religious sacraments—and a claim has been successfully advocated in the other House—is it not our duty to see that the claim is resisted with all our might? Is it not necessary that we should stand up and say, “We know our own business. We know it is a religious sacrament and you have all along been acting on the principle that you would never violate a religious sacrament”? This morning my friend, Mr. Ramadas Pantulu, referred to Lord Lansdowne’s dictum with reference to the right of the Government to interfere in matters of religion. And he also referred to the Government of India Act and to the other provisions similar to it in the earlier Acts. My position is that there has been a claim put forward by our foreign rulers. They were by Acts of Parliament, and to the Acts of Parliament our representatives were not parties and were never consenting parties even after the passing of the Acts. Our position is that when the claim has been put forward it was not within our power to resist that claim in the British Parliament. For the first time in the history of British rule a religious sacrament is sought to be violated by penal legislation. (*Honourable Members*: “Question?”) My friend the Honourable Mr. Ramadas Pantulu has been referring to a number of legislative measures which have been enacted on the principle that the Government can interfere with religion. But, on analysing them, they come to this. *Sati* has been referred to as a part of the religion, but it is not a part of religion, as the Honourable Mr. Khaparde has pointed out. It is a common, universal thing. It may take different forms, and *Sati*, though it was attempted to be abolished, was not abolished, as has been made out by my Honourable friend. But my point is that *Sati* was never part of religion. It is only a gloried martyrdom, an act which was held in very great reverence by our ancients. *Sati* was put down not by the British rulers, but by our national Government, the Muhammadan rulers who preceded the British. No doubt, that principle has been further carried forward by the Britisher, and after

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all, the legislation undertaken for the purpose affects only social customs. As regards the various enactments which have been cited as instances to show religion has been interfered with, I submit that all these various Acts which have been mentioned have been made in furtherance of the liberty of conscience which I advocate here in opposition to this Bill. They were several permissive legislations. For instance, the Widow Remarriage Bill, etc. The object of those Bills was not to force any particular class of people who may have conscientious objection to a particular course to remain within the Hindu fold. The legislation was undertaken to further that liberty of conscience, which I now advocate, and this Bill is certainly laying the axe at the root of liberty of conscience. The various enactments which have been referred to by the Honourable Mr. Ramadas Pantulu this morning are merely instances which support my argument that liberty of conscience ought not to be interfered with. He referred to various enactments which have affected the law of succession under Hindu law. I submit that the principle *Pindam datwa Dhanam Hareth*—the estate follows the *pinda*—has never been recognised as a cardinal principle by any school of Hindu law, and succession to property has always been regarded as a purely secular institution, so that, interference with the line of succession or with the right to property can never be regarded as an interference with religion.

THE HONOURABLE SIR MANECKJI DADADBHOY : What about the law of adoption ?

THE HONOURABLE MR. P. C. DESIKA CHARI : No doubt adoption is regarded as a very desirable thing, but the principles of the law of adoption have never been questioned.

THE HONOURABLE SIR MANECKJI DADABHOY : Is it not a religious obligation to adopt ?

THE HONOURABLE MR. P. C. DESIKA CHARI : It is not a religious obligation. I may say for the information of the Honourable Sir Maneckji Dadabhoy that it is an institution which is regarded with favour by the community, and religion never objected to it.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Are we going to have a dissertation on adoption now ?

THE HONOURABLE MR. P. C. DESIKA CHARI : My point is that though it has been claimed by various Acts of Parliament that the Legislatures have a right to interfere with religious customs and usages, this is the first instance of that claim being actually put into force, and when there is interference with a religious sacrament, it is our duty to see that our religious sacraments are not violated by the Legislatures.

The next question that I wish to deal with is about post-puberty marriage. Rightly or wrongly, a large section of the people—I will not say an important section of the people ; the Brahmins all over India form only 3 per cent. of the population—have been regarding pre-puberty marriage as a thing which they are bound to carry out. (*An Honourable Member* : “Shame.”) The educated Brahmins no doubt have been violating it, as pointed out by my Honourable friend Mr. Pantulu. I do not object to propaganda work being done to educate public opinion among these Brahmins to tell them that it is

high time that they gave up this system of pre-puberty marriage. But it is one thing to do propaganda work with these people. But to tell them, who have got a conscientious objection to celebrating post-puberty marriages, "You must do it; if you do not take our advice, here is the law for you, and you will find yourself in prison" is a thing which I do not approve of to be addressed to people who have been observing these customs for centuries and centuries. If there is a conscientious clause leaving a loophole for them, so that they may be educated by the other 97 per cent. of the people, and by the educated members of their own community, they may be reconciled after all to the institution of post-puberty marriage. But to interfere with matters of conscience, with firm rooted religious faiths which have been in existence for centuries is rather a serious matter and I certainly object to legislation being brought in one fine morning to force this social reform down the throats of these people. I may tell you that there are thousands and thousands of villages all over India where the Brahmins have been living the old, old life, free to do their own *samskaras*, free to carry on their religious worship and to act in all matters according to their age-long customs which they think are according to the Shastras. Is it fair on the part of the reforming section to suddenly pounce upon them and tell them, "Look here, you have had liberty of conscience for thousands and thousands of years. We have got the support of the mighty British Government. No longer can you have peace in your own homes. We have got the necessary aid of the Government to force you to come down to our level, to accept our principles, to give up your ancient customs which are the work of centuries"? Sir, that is a position which I cannot tolerate. Intensive propaganda, moral persuasion and growth of healthy public opinion should precede any legislation of this kind. And as nothing has been done in these directions it is not opportune—even if you admit for the sake of argument that it is open to the Legislature—to enact a penal law with the object which this reform has in view. I quite agree with what my friend the Honourable Mr. Ramadas Pantulu said that this legislation if enacted would not lead to loose morals. I strongly protest against any statement that this legislation would have that demoralizing effect. I do not object to it on that ground. What I wish to point out is the grave unwisdom of forcing a change on the whole structure of society and undermining the foundations of Indian social life by penal legislation, relying upon doubtful medical opinions. It is not necessary for me to dispute the authorities brought forward one way or the other, medical or otherwise, as regards the existence of the evil and as regards the root causes of these evils. Let it suffice to say, as has been pointed out with the aid of statistics contained in the Census Report of 1921, that these corroding evils, as they are called, are not due to our ancient institutions. It may be due to other causes. But when you cannot be sure of your premises, when you cannot be sure of the remedies, when you cannot diagnose the disease, is it fair to enact a drastic measure of this kind? (*An Honourable Member*: "Who told you that?") I do not want to take the time of the Council to show that the medical opinion in this matter is no good at all. But it is not necessary for me to refute the authority of medical men. All I say is that it is not conclusively proved that the present condition of society and the present high rate of infantile mortality, like the death of large number of girl mothers, have been due to these evils. (*An Honourable Member*: "Question?")

[Mr. P. C. Desika Chari.]

You may question it, but after perusing all the literature on the subject I do not find that it has been successfully made out that these conditions are to be attributed to the system of early marriage. As regards the opinion of westerners and others who have studied this question, there are various conflicting views. On the other hand various sociologists after studying Indian conditions have nothing but praise for the social institutions of India. That being the case it is not desirable that we should base any legislation on the views of these medical experts or on the views of outsiders who have come into the country and expressed conflicting views as to the causes of the present condition of Indian society.

Sir, I do not propose to take the time of the Council as I originally wanted to at this late hour, but I would appeal to you that the principles of this Bill are not acceptable to people who regard Hindu marriages as sacraments, and I for my part cannot reconcile myself to the view that a Hindu marriage is not a sacrament. I am opposed to the principle of a penal measure which concerns the delicate relations of human life. I am supported by millions of people who are members of this glorious heredity of civilization, whose social institutions have withstood the test of time and successfully withstood successive cycles of foreign invasions and conquests.

With these words I beg to oppose the motion.

THE HONOURABLE MR. G. A. NATESAN : I move that the question be now put.

THE HONOURABLE THE PRESIDENT : The question is that the question be now put.

The motion was adopted.

(The Honourable Mr. V. Ramadas Pantulu rose in his place.)

THE HONOURABLE THE PRESIDENT : The House having accepted the closure, the Honourable Member loses the right of reply.

The question is :

"That the Bill to restrain the solemnization of child marriages, as passed by the Legislative Assembly, be taken into consideration."

The Council divided :

AYES—28.

Ashraf-ud-Din Ahmed, The Honourable Khan Bahadur Nawabzada Saiyid.	Maqbul Husain, The Honourable Khan Bahadur Sheikh.
Asthana, The Honourable Mr. Narayan Prasad.	Mookerjee, The Honourable Srijut Rama Prasad.
Basu, The Honourable Rai Bahadur Suresh Chandra.	Natesan, The Honourable Mr. G. A.
Burdon, The Honourable Mr. E.	Ram Saran Das, The Honourable Rai Bahadur Lala.
Charanjit Singh, The Honourable Sardar.	Ramadas Pantulu, The Honourable Mr. V.
Clayton, The Honourable Mr. H. B.	Rama Rau, The Honourable Rao Sahib Dr. U.
Commander-in-Chief, His Excellency the.	Ray Chaudhury, The Honourable Mr. Kumar Sankar.
Dadabhoy, The Honourable Sir Maneckji.	Ryan, The Honourable Mr. T.
Dutt, The Honourable Mr. P. C.	Symons, The Honourable Major-General Sir Henry,
Fazl-i-Husain, The Honourable Khan Bahadur Mian Sir.	Thompson, The Honourable Sir John.
Graham, The Honourable Mr. L.	Watson, The Honourable Sir Charles.
Gwynne, The Honourable Mr. C. W.	Weston, The Honourable Mr. D.
Harnam Singh, The Honourable Raja Sir.	Woodhead, The Honourable Mr. J. A.
Harper, The Honourable Mr. K. B.	
Latifi, The Honourable Mr. Alma.	

NOES—10.

Akbar Khan, The Honourable Major Nawab Mahomed.	• Mehr Shah, The Honourable Nawab Sahibzada Saiyad Mohamad.
Akram Husain Bahadur, The Honourable Prince A. M. M.	Muhammad Hussain, The Honourable Mian Ali Baksh.
Desika Chari, The Honourable Mr. P. C.	Padshah Sahib Bahadur, The Honourable Saiyed Mohamed.
Jaffer, The Honourable Sir Ebrahim Haroon.	Suhrawardy, The Honourable Mr. Mahmood.
Khaparde, The Honourable Mr. G. S.	Surput Sing, The Honourable Mr.

The motion was adopted.

THE HONOURABLE THE PRESIDENT : The question is :

“ That clause 2 do stand part of the Bill.”

THE HONOURABLE MR. P. C. DESIKA CHARI : Sir, I move the amendment which stands in my name and which runs as follows :

“ That the following proviso be added to sub-clause (2) of clause 1 of the Bill, namely :—

‘ Provided that nothing in this Act....’ ”

THE HONOURABLE THE PRESIDENT : Order, order. I put clause 2 to the Council. Clause 1 will come at the end. Clause 2 ; amendment No. 13 on the paper.

THE HONOURABLE MR. P. C. DESIKA CHARI : I beg to move the amendment which stands in my name and which is as follows :

“ That in sub-clause (a) of clause 2 of the Bill for the word ‘ fourteen’ the word ‘ twelve’ be substituted.”

Sir, in moving the amendment, I have the support of the learned Pandit Madan Mohan Malaviya who has defended his position very ably in his minute attached to the report of the Select Committee. It is this. The Bill is objectionable from the orthodox point of view. It is necessary to conciliate the various sections who are opposed to the Bill and it is further necessary that we should proceed with extreme caution ; and, if the age is fixed at twelve, we would achieve a very great thing, because if we obtain support from all sections of the people to this age, we secure the support of those who are opposed to the very principles of the Bill. In that case, the principle having been once accepted, after the Bill has been in operation for some time—it may be possible to educate public opinion in the meanwhile—the marriageable age may be raised still further. If the Rubicon is once crossed, it is quite easy to go on raising the age. That is one point.

The second point is, as I pointed out at the consideration stage, that it is not desirable to have sudden changes in the systems of marriage which may not be acceptable to all classes of people. With a view to make it acceptable to the largest class of people, this amendment is proposed. There is a large section of people, as I have already pointed out, who believe that if they are a party to a post-puberty marriage of a girl, the gate to heaven will be closed. Rightly or wrongly, they believe that. On the other hand, as my friend Mr. Rama Prasad Mookerjee has pointed out, there are classes of people in the lowest strata who have been accustomed, on economic or other grounds, to have the marriages celebrated at a very early age. Their case has also to be taken into consideration.

[Mr. P. C. Desika Chari.]

It will be a real hardship to certain classes of people if you insist upon reform at one stretch and tell them that you must have post-puberty marriage ; rather than that, it is desirable to deal with the evil effectively to a certain extent ; and Honourable Members who have perused the proceedings of the Legislative Assembly cannot but be impressed by the fact that a large volume of opinion is in favour of conciliating the view of people who are opposed to the principles of this Bill by adopting this age of 12. We find in the Age of Consent Committee's Report that in most of the provinces (I believe except in Bengal) the general age of puberty ranges from 12 upwards. Such being the case, I think it is necessary in the interests of the reform, which is being advocated by this measure, to fix the age at 12 and slowly get along to higher ages when public opinion is sufficiently advanced.

With these words, I commend this amendment for the acceptance of the House.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Sir, I beg to oppose this amendment. If we accept this amendment, the very object of the Bill will be frustrated. I oppose this amendment mainly on the medical and national health point of view. In India the rate of infantile mortality is very high. For instance, in a city like Madras, where every year 20,000 children are born, not less than 6,000 children, or one-third, die before they attain the age of one year. This is all due to girl mothers bringing forth children at a very early age. Unless the age is fixed at 14, as usual marriage will take place at 10 or 11 and just after the marriage, owing to the frequent talk of marriage of girls at an early age, the sex mentality psychologically is stimulated, with the result that puberty is hastened ; and the moment they attain the age, generally consummation is effected, and before they are 12 or 13 they become mothers ; and when once they begin to bring forth children, it so happens that every year they go on bringing forth children. In that way before they are 15 or 16, the health of the mother breaks down and she is of no use for this work. So far as the children are concerned, through not having enough mother's milk and being artificially fed, their health suffers considerably and they contract all sorts of diseases, such as rickets and other deficiency diseases. Then, even if they live longer than one year, they easily fall a prey to epidemic diseases and die, due to want of vitality in their system. So far as these child mothers are concerned, the maternal mortality of India is 17·89 per thousand, whereas in Europe it is 2·35 to 6·64 per thousand. That shows the enormous difference between India and Europe. Then in India the maternal mortality at the age below 15 years is double that at the ages between 15 and 19. And that is another reason why the age of marriage should be fixed at 14. And the vitality of these infant mothers, when they bring forth children at such a young age, is sapped and they become an easy prey to consumption. Consumption is a disease which attacks any person whose vitality is at a low ebb, and if you take statistics into consideration, 50 per cent. are those who give birth to children at the early age of from 12 to 13. If you take the statistics which are given in this book, my statement is proved. And look at our manhood. Every day by day and year by year our health is going down and the average life of a man in India is the lowest in the world. The Honourable Mr. Khaparde belongs to the old type, but, as we know, the vitality of Indians is becoming lower day by day. That is due to the mothers.

Let us look at the provinces where infant mortality is not so very high. Take, for instance, the Punjab, where infant marriage is only 35·5 per cent., whereas in Bengal and Bombay it is 64 per cent. Compare the health of the Punjabis with that of the Bengalis. The Punjabis are certainly stronger, both men, women and children. That in itself shows that early marriage has a bad effect.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: The Punjabis' physique has deteriorated considerably in recent years.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Or take the province of Assam where child marriage is only 27 per cent. and the North-West Frontier Province where it is 19 per cent. The people there are very strong. That is another reason why the age of marriage should be fixed as high as 14. My own opinion is in favour of 16, but as a compromise I am willing to fix it at 14. If we want to improve the Indian nation physically, we must have healthy and strong mothers. Weak mothers cannot give birth to strong children. We are all fighting for Swaraj. When we get Swaraj, unless we have healthy and strong men, how shall we succeed in maintaining it? Certainly we will not have Swaraj long, unless we have strong and healthy men.

Further, Sir, this Bill is intended to protect child widows. Their troubles and miseries are known to every Member of this House. I do not want to waste the time of the House by recounting them, but the sooner we get rid of them the better. And the only remedy is to advance the age of marriage up to 14 or higher.

The opponents of the Bill have been quoting the Shastras or Puranas. What are the Shastras? They are made for the welfare of the community. If the people think the Shastras ought to be improved and require modification, there is no reason why this should not be done. Then again, do we really follow the Shastras? The Shastras lay down that you should marry your daughter at 8 years of age. Do you stick to that? Do you not marry your girls at any age from 8 to 13? If so, why not 14?

THE HONOURABLE MR. P. C. DESIKA CHARI: That will be done gradually.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: I am not one of those who believe in doing it gradually. 14 is the earliest age from my point of view. After all, laws are intended for the welfare of the community, and should be judged in the light of common sense. And common sense tells us that we must fix an age as high as possible.

Then, Sir, as for the argument that the girl ought to marry before she begins to menstruate, opinion differs and Pandits differ. And there are hundreds of instances even now where the girls are married after they menstruate, of course secretly. Why not give them open opportunities to marry with a clean conscience? I know, Sir, a family where there are four girls. The first girl was married at the age of 12 and began to menstruate at 13. The second girl was married at 13, and did not menstruate till 14. The third girl was married at 14 and menstruated at 15. That shows that the mentality is stimulated by the idea of husband and marriage, and that brings on menstruation. If you fix the age at 14, because the girl knows that she cannot marry before then, that mental stimulation will not exist and she will continue up to 14 without menstruating.

[Rao Sahib Dr. U. Rama Rau.]

Then, Sir, there is another very shameful and degrading practice in Southern India—I do not know if there is the same practice in other parts of India—and that is the system of giving dowries during the time of marriage. I heard to-day from a Bengal Member that the dowry system is prevalent there too, whereas in my part of the country the dowry is given if a boy marries a particular girl. And that system is very degrading and degenerating. Before a girl is married to a boy either the boy or the boy's relation demands a big dowry depending on the social position of the boy or the University examination that he has passed. Very often, it is the practice in Madras that a boy who has passed the School Final will demand a dowry of a thousand rupees; a boy who has passed the Intermediate, Rs. 2,000; a boy who has obtained his B.A. degree, Rs. 3,000, and so on. And just imagine a poor man having a number of girls who is afraid to keep the girls long unmarried lest they should begin to menstruate, and if they do that, nobody will take them! So the man has to sell his property and undergoes untold miseries in order to get his girls married before they begin to menstruate. This is a very great hardship on poor people. Such being the case, this hardship would be put a stop to if this Bill is passed into law.

Again, Sir, the Honourable Mr. Khaparde doubts doctors and science. All that is answered in this book. If he goes through it carefully, all his questions will be answered. Though he does not believe in doctors and their doctrines, doctors have to be relied upon. They go by statistics available in all parts of India. As the Honourable Mr. Mookerjee has said, he has no regard for these statistics. But the only statistics available are the hospital statistics. The people who are there are very poor people who cannot take care of themselves. So, the statistics are given here. He also said that infantile mortality and maternity mortality are not due to age at all. I am one of those who think that they are mainly due to early marriage. If they give birth to children at a tender age, the effects are very dangerous. I know for instance.....

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: I did not say that it was not at all due to early marriage. That was only one of the reasons for the heavy mortality.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: This book says that it is mainly due to that. Because, as soon as the girl is married there is every chance of a girl becoming pregnant, if she is married at an early age, whereas if she is married late, the chances of getting more children are less.

With these few observations I strongly oppose the amendment that has been moved.

THE HONOURABLE MR. SURPUT SING: Sir, I beg to support the amendment moved by my Honourable friend Mr. Chari. My object is to bring the age on a par with the age which was accepted by the framers of the original Age of Consent Act. Twelve is the universally accepted age in this country. That was the age also proposed by Rai Shaib Harbilas Sarda in his original Bill. We must not also forget that only a few months back twelve was the age for marriage in Great Britain where the age of puberty is admittedly higher than it is in this country and where marriage usually takes place at about eighteen and over. The main opposition to the Bill, Sir, will be greatly isarmed if this amendment is accepted by the House.

THE HONOURABLE THE PRESIDENT : The original question was :

“ That clause 2 do stand part of the Bill.” •

Since which an amendment has been moved :

“ That in sub-clause (a) of clause 2 of the Bill for the word ‘ fourteen ’ the word ‘ twelve ’ be substituted.”

The question is that that amendment be made.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question then is :

“ That clause 2 do stand part of the Bill.”

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

“ That clause 3 do stand part of the Bill.”

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, I beg to move the amendment which stands in my name :

“ That in clause 3 of the Bill after the words ‘ child marriage ’ the words ‘ knowing or having reason to believe that it is a child marriage ’ be inserted.”

Clause 3 refers to punishment for a male adult below 21 years of age marrying a child. That is what the side note says. As is quite evident from the amendment that I propose, a person ought not to be punished for committing an offence which he does not know at the time when he commits it to be an offence. If the person knowingly commits the offence, or had reason to believe at the time when the offence was committed that the girl with whom he was being married was under 14, then he may be punished. Certainly it is not the intention of the framers of the Bill to punish persons who might after enquiry into the age of the girl have been satisfied that the girl was above 14. But when the case comes up before the court later on, under the subsequent clauses of the Bill, the court holds that although inquiry was made by the prospective husband before marriage, he was not correct in his assumption as to the age of the girl. In such cases, certainly the husband ought not to be put to the punishment mentioned here.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, I am constrained to oppose this amendment. My friend will see that the section requires that the prosecution should prove that the offender contracts a child marriage. In order to prove that fact, the prosecution has got to prove that either party is a child. A child is defined as a person under 18 years of age if a male and under 14 years of age if a female. The prosecution has got affirmatively to prove that either of the parties was a child under the clause. Unless this is established by the prosecution positively and affirmatively, no offence is brought home to the accused. After this is done, my friend wants the prosecution to prove further that the person who contracted the marriage also knew or had reason to believe that it was a child marriage. That will be an impossible burden to sustain for the prosecution in a court of law. My friend as a lawyer knows that under the sections relating to onus of proof in the Evidence Act, the onus of proof is thrown on the person who has better means of knowledge

[Mr. V. Ramadas Pantulu.]

than any other person. The prosecution cannot be expected to know the age of the parties better than the man who contracts the marriage. Very often, so far as the Hindus are concerned, I know that horoscopes are consulted, the date of birth of the girl is ascertained, and there will hardly be a case of a girl or boy marrying each other without knowing the exact age or date of birth of each other. I suppose this takes place even among the Christians. They know the date of birth of the bride or the bridegroom. Therefore, as between the prosecution and the accused, the person who has better means of knowing the date of birth is the accused in this particular case, and he is generally expected to make inquiries and possess requisite knowledge or means for such knowledge. If the amendment is accepted, it will nullify the provisions of this Bill. Therefore, I am constrained to oppose the amendment.

THE HONOURABLE MR. G. S. KHAPARDE : I beg to support the amendment on the ground that the principle which my Honourable friend has enunciated, that the person who has better means of knowing should prove it, would be easily interpreted to mean that the guilty man knows whether he has committed the offence or not, and therefore, when a charge is brought against him he should prove his innocence or go to jail. If that is the understanding of the law, I object to it. The principle is not that the man who has got greater knowledge should prove, but the prosecution must in every case make out its case. After the prosecution makes out the case and a charge is framed, then the defence is called upon to plead and to give evidence. Therefore, I support the amendment which has been moved.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Sir, I am in sympathy with the object of the amendment, but, Sir, as I have already explained, the amendment if carried will defeat the Bill. Therefore, I oppose it.

As regards the objection raised by my Honourable friend Mr. Ramadas Pantulu about the onus, my submission would be that accepting the onus by the accused, he ought to have been given an opportunity to show that he had a sufficient case of not knowing that the age was really below the prescribed age.

THE HONOURABLE MR. V. RAMADAS PANTULU : He can show that there was no child marriage.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Under the clause as drafted it is not open to him.

THE HONOURABLE MR. V. RAMADAS PANTULU : It is open to him to disprove the prosecution case.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : With
5 P. M. these words, Sir, I oppose the amendment.

THE HONOURABLE THE PRESIDENT : The original question was :

“That clause 3 do stand part of the Bill.”

Since which an amendment has been moved :

“That after the words ‘child marriage’ the words ‘knowing or having reason to believe that it is a child marriage’ be inserted.”

The question is that that amendment be made.

The motion was negatived.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: My next amendment is with regard to the same clause. I move:

“That in clause 3 the words ‘and below twenty-one’ be omitted.”

A differentiation has been made between a male between 18 and 21 in this clause and, in the next clause, males above 21 years of age. I do not want that any differentiation should be made between these two classes of persons. If this amendment with regard to clause 3 is carried, then the consequential amendment that clause 4 be omitted altogether would come in. The result will be that all persons who contract a child marriage shall be punished with fine which may extend to one thousand rupees. That is the purpose of this amendment.

THE HONOURABLE MR. V. RAMADAS PANTULU: Sir, the differentiation between the two classes of offenders has been based upon the fact that in the case of persons between 18 and 21 years they are generally or at any rate sometimes under the influence of guardians, and in some cases the minority is extended by Statute as, for instance, of those under the Court of Wards, etc.; they have when over 21 a much greater freedom. Therefore, there is a real difference between them and persons still under tutelage—in their case the guardians take a much greater interest in their marriage than they do themselves; whereas people above 21 are themselves directly concerned. That is the reason for the differentiation.

THE HONOURABLE MR. G. S. KHAPARDE: My friend Mr. Ramadas Pantulu has not given us the reason for a differentiation in punishment between an offender of 18 and an offender of 21. How is the man of 21 a greater offender than the man of 18? I do not see that there is any ground for difference between them and therefore the amendment should be carried.

THE HONOURABLE MR. V. RAMADAS PANTULU: Under certain Statutes minority extends to 21 also.

THE HONOURABLE THE PRESIDENT: The question is:

“That in clause 3 the words ‘and below twenty-one’ be omitted.”

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

“That clause 3 do stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 4. Does the Honourable Member wish to move the same amendment to this clause?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: No, Sir, as the amendment to clause 3 was lost it is not necessary to move it.

THE HONOURABLE MR. SURPUT SING: Sir, with your permission I propose to take together the amendments to clauses 4, 5 and 6.

THE HONOURABLE THE PRESIDENT : I think perhaps the Honourable Member had better confine his remarks to clause 4 at present.

THE HONOURABLE MR. SURPUT SING : Then I move :

“ That in clause 4 of the Bill for the words ‘ simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both ’ the words ‘ fine which may extend to one thousand rupees ’ be substituted.”

My endeavour is to take the sting out of the Bill. Tender and delicate family relations should not be subjected in all conscience to such a penalty provision as imprisonment. In a poor country like India a fine is amply calculated to meet cases of infringement of the marriage law. In the lower Chamber it is evident that the intention was made clear that all infractions should be met by a fine only. With these remarks, Sir, I beg to submit my amendment for the acceptance of the House.

THE HONOURABLE MR. V. RAMADAS PANTULU : I have explained Sir, the difference between clauses 3 and 4. Clause 4 deals with a person who is above 21 years of age, when he may be expected to be responsible, and therefore a heavier punishment is provided in this case.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, in this Bill—I speak with regard to clause 4 though the same principle applies to some other clauses as well—the proposal to have imprisonment as a punishment for the offence is I think wrong on principle, at least in the initial stages of this reform. Sir, as said by the different speakers this morning, there is a large section of the public opposed to this legislation. It is either a penal legislation or a legislation for educating the public. If it be a penal legislation, then by all means retain imprisonment. But I submit that the framers of the Bill did not want this to be a penal legislation, at least in the beginning. After this Bill has become an Act and has been in force for some time, when all the people in the country know the provisions of the law and the purpose for which this Bill is enacted, then it will be a proper time for putting in the graver punishment of imprisonment. Until and unless education spreads in the country, it is not fair to impose such a punishment for the offence as is here laid down. At this late hour I do not want to go into the report of the Age of Consent Committee. But I am sure that Honourable Members have seen there that a definite opinion was expressed by a large section of the reformers even who appeared before the Committee that at least in the beginning it ought to be merely a fine and not imprisonment for the offence.

***THE HONOURABLE MR. NARAYAN PRASAD ASTHANA :** Sir, I oppose the amendment because if a fine is simply to be imposed the people will habitually disobey the law. They will think that a fine is but one of the necessary expenses to be incurred in marriage. (*An Honourable Member :* “ Up to a thousand rupees ? ”) Yes, certainly. They already spend thousands of rupees on fire-works, thousands for processions, and they would readily pay a thousand for a fine also. It would be one of the normal expenses of a marriage celebration. We are legislating here for all time. Of course in

* Speech not corrected by the Honourable Member.

the preliminary stages the courts will themselves take a lenient view. But here we are legislating for all time, and therefore it is necessary that the punishment of imprisonment should remain.

THE HONOURABLE MR. G. S. KHAPARDE : The argument of my friend Mr. Asthana appears to be that people have no sense of *izzat* or any sense of decency at all, and that they will regard the fine as part of the expenses to be incurred. He thinks that the fact of conviction for the offence would not weigh with them at all. This mentality is not seen in my own province, nor do I possess it myself. I therefore submit that the amendment should be carried.

THE HONOURABLE THE PRESIDENT : The question is :

“That in clause 4 for the words ‘simple imprisonment which may extend to one month, or with fine which extend to one thousand rupees, or with both’ the words ‘fine which may extend to one thousand rupees’ be substituted.”

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question is :

“That clause 5 do stand part of the Bill.”

The motion was adopted.

Clause 4 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

“That clause 5 do stand part of the Bill.”

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, my amendment runs as follows :

“That in clause 5 for the words ‘performs, conducts or directs,’ the words ‘actually officiates in that part of the ceremony which finally renders the marriage tie indissoluble-in’ be substituted.”

This clause deals with persons who are not only responsible for the marriage but those who perform, conduct, or direct any child marriage, and they are liable to punishment. The wording which has been suggested by me in the amendment is the wording which appears in the report of the Age of Consent Committee itself. It was never the intention of the framers of the Bill to bring in all persons who may be directly or indirectly performing a child marriage. Is the poor barber who officiates to be brought within the four corners of this clause? At least in Bengal there is a certain portion of the marriage where not only the priest but the barber has to officiate in certain parts of the ceremonies.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : That is not the wording in the clause. Your amendment will make him liable, because you use the word “officiates”.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : There are other female members of the family who perform certain parts of the ceremony. In my amendment I have clearly stated, it is only in the final stage of the marriage ceremony that the person responsible should be brought within the purview of this clause, that is, the person who gives the bride away, the priest who utters the *mantra* and nobody else. Those are the two persons who are really responsible for the ceremony.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : And not the bridegroom?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : The bridegroom comes in under another clause. This clause is not for the bridegroom, but for a person who is not either of the contracting parties—neither the bride nor the bridegroom. There is separate provision in the Bill for them. I suggest to Honourable Members who go by the report of the Age of Consent Committee that they ought to accept this very reasonable suggestion of the Committee which was not recommended by the Select Committee, which was appointed before the Age of Consent Committee submitted its report. The change made in the amendment is according to the suggestion of the Age of Consent Committee.

THE HONOURABLE MR. V. RAMADAS PANTULU : In opposing this amendment, I would just state two things. I would remind my Honourable friend that the Bill as framed by Mr. Sarda originally was much more drastic ; he wanted to invalidate all child marriages. Then, the Select Committee altered it radically, and the idea is not to take such a drastic step but to cast the net as wide as possible so as to punish everybody responsible for child marriages. That is the new principle. That principle will be greatly abrogated by the amendment which my Honourable friend suggests. I would also remind this Honourable House that the jurisdiction in regard to this is vested in District Magistrates and Presidency Magistrates, who are very experienced magistrates, knowing the law and the customs of the country. Therefore, they know what is meant by “ performing, conducting or directing ” a marriage. I do not think any District Magistrate or Presidency Magistrate vested with jurisdiction under the Act will go to the length of punishing a barber or a musician or a person of that sort. The fear is absolutely unfounded. The idea is to get at the people who are really responsible and save others who cannot be responsible. The amendment is really mischievous, in the sense that it will have legal mischievous consequences, and therefore I beg to oppose this amendment very strongly.

THE HONOURABLE MR. G. S. KHAPARDE : I wish to support the amendment, on the ground that we have the words : “ Whoever performs, conducts, or directs ”. Supposing in the case of a marriage, a man goes to an astrologer and says, “ I wish to give my daughter in marriage to such and such person, will you kindly tell me whether the marriage is auspicious, ” and the astrologer tells him that it is auspicious, he would have to go to jail. (*The Honourable Mr. V. Ramadas Pantulu :* “ No ”.) Similarly, a man comes to me and says, “ I have not got a house, will you kindly lend your house ” and I lend my hall, I ought to go to jail. The priest, musicians and other people who help in the marriage will go to jail. I have seen harsh legislation, but this is a kind of legislation which I have never seen before.

THE HONOURABLE THE PRESIDENT : The question is :

“ That in clause 5 for the words ‘ performs, conducts or directs ’ the words ‘ actually officiates in that part of the ceremony which finally renders the marriage tie indissoluble in ’ be substituted.”

The motion was negatived.

THE HONOURABLE THE PRESIDENT : Does the Honourable Member wish to move the next amendment (No. 18 A on the paper) ?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: The next is the same as the previous one just rejected, and I will not move it.

THE HONOURABLE THE PRESIDENT: Clause 5; amendment No. 19. The Honourable Mr. Surput Sing.

THE HONOURABLE MR. SURPUT SING: I beg to move:

"That in clause 5 of the Bill for the words 'simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both,' the words 'fine which may extend to one thousand rupees' be substituted."

My intention is to impose a fine only instead of imprisonment. India is a very poor country and if a fine is imposed that will be sufficient to meet the purposes of law. As my friend the Honourable Mr. Asthana has said, there are many people who can spend thousands of rupees on fireworks. I beg to submit that India is considered to be one of the poorest countries and there are very few people who can afford to pay Rs. 1,000 as fine. I request the House to consider this matter and accept the amendment.

THE HONOURABLE THE PRESIDENT: The question is:

"That in clause 5 of the Bill for the words 'simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both,' the words 'fine which may extend to one thousand rupees' be substituted."

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

"That clause 5 do stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 6 do stand part of the Bill."

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

"That in sub-clause (1) of clause 6, the words 'or negligently fails to prevent it from being solemnised' be omitted."

Sir, clause 6 refers to the punishment of a parent or guardian concerned in a child marriage. The first part of the first paragraph of the clause is all right. But the second part of the first paragraph (I will read the first few lines too) runs as follows:

"6. (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised "

here comes the pertinent clause—

"or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both."

My objection to that part of the clause is this; that if a boy goes away from the father and marries an infant as defined under clause 2, then he would be made able because here again the onus is on him to show that he ought to have

[Srijut Rama Prasad Mookerjee.]

exercised proper control over the son and not allowed him to marry a child. That is not fair. Where a son is living under the care of the father or the father is instrumental in giving a boy in marriage, certainly punish him. But where the father is not responsible for the marriage but the son is responsible for the marriage himself, I wonder how the father can be brought in. Sir, here it is even possible that it may be in the case of a girl even, when our society is progressing or rather retrogressing towards western methods, there might be instances where a girl even might leave the protection of the father and go and marry. Then, would the magistrate come down on the father and say that he was responsible for the minor daughter and therefore should be punished for the minor girl having herself been married to another person ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is there no significance in the word "negligently" ?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, the previous part of the clause is sufficient to include these things, because the words "who does any act to promote the marriage or permit it to be solemnised" refer to the active participation of the parent.

THE HONOURABLE MR. G. A. NATESAN : But there is an explanatory clause which makes it clear.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Yes, the second part of the clause creates all the difficulty. That does not go as far as I propose ; on the other hand the second part runs as follows :

"(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised."

THE HONOURABLE MR. G. A. NATESAN : What more guarantee do you want than that ?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : But if the negligence is there presumed, then the onus is on the poor parent that, if the child goes away from the protection of the father, then he is to be made responsible for that. No doubt, in our Hindu society the sons have so long been quite different from the sons in western countries. The influence of the father in the family is felt much more in Hindu families than in western families but, as I have stated at another time, owing to various circumstances, that influence is now diminishing and it is not a very rare thing for a son to go away from the protection of the father and marry without the permission of the father. Sir I think it only fair that in such cases the onus should be put not on the father but on the prosecution. And the first two parts of the clause are sufficient and would be a deterrent for these cases.

THE HONOURABLE MR. G. S. KHAPARDE : Sir, I have submitted an amendment that clause 6 of the Bill be omitted.

THE HONOURABLE THE PRESIDENT : The Honourable Member is not entitled to move an amendment in those terms "that the clause be omitted," that being a negative motion.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Sir, in this case I oppose this amendment on the merits, because the word "negligently" is a sufficient protection against the guardian. The guardian under the Guardians and Wards Act has control over the minor and if he does not exercise that control he certainly ought to be made responsible provided there is no negligence on his part. As regards my learned friend's observations with regard to the presumption, my submission is that under section 106 of the Evidence Act, the onus in such cases under the general law is generally thrown on the person who has special knowledge.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : What is the special knowledge ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Because he is in control of the minor.

THE HONOURABLE THE PRESIDENT : The question is :

"That in sub-clause (1) of clause 6 the words 'or negligently fails to prevent it from being solemnised' be omitted."

The motion was negatived.

THE HONOURABLE MR. SURPUT SING : Sir, in moving my amendment to clause 6 :

"That in sub-clause (1) of clause 6 of the Bill for the words 'simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both' the words 'fine which may extend to one thousand rupees' be substituted "

I beg to submit that instead of imprisonment a fine will be quite sufficient for the purpose of the Bill and so the amendment may be considered by the House and accepted.

The motion was negatived.

THE HONOURABLE MR. SURPUT SING : I withdraw my next amendment, Sir, by which I ask that the proviso to sub-clause (1) of the clause be omitted.

THE HONOURABLE THE PRESIDENT : The question then is :

"That clause 6 do stand part of the Bill."

THE HONOURABLE MR. G. S. KHAPARDE : Sir, I sent in an amendment that this clause be deleted ; that is to say, I oppose its being passed. My reason, Sir, is, first, that it contravenes the first principles of criminal jurisprudence to place the burden of proof on the accused. Next, the earlier part of it is what is difficult to understand and not quite clear, and therefore it is much better that a requisition of this kind might be omitted than passed in this form.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 6 do stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill

Clauses 7 and 8 were added to the Bill.

THE HONOURABLE THE PRESIDENT : I think that might be a convenient stage at which to adjourn the Council. I think there is very little likelihood, unless we sit till very late, of finishing the Bill this afternoon. I do not know whether the House would like to follow this morning's precedent and meet at a slightly earlier hour than usual to-morrow so as to ensure the business being finished at all events before the adjournment for Lunch.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Is it not possible to meet even earlier than to-day? If we meet at 8-30 A.M., then it is possible to finish the whole thing by 12, so that we may go back to our places then.

THE HONOURABLE MR. G. A. NATESAN : There is another alternative, Sir. If the House by a majority think they can sit another half an hour or three-quarters of an hour and finish the Bill to-day, it can be done.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I also support the Honourable Mr. Natesan that the Bill may be gone through to-day.

THE HONOURABLE THE PRESIDENT : If the House is really anxious to sit now, I am quite prepared.

THE HONOURABLE MR. G. S. KHAPARDE : You have been sitting from the morning.

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN : This is a matter in which I should very much like to have the opinion of those who are opposed to the Bill, because we must consult their convenience.

THE HONOURABLE MR. P. C. DESIKA CHARI : Let us have it to-morrow. We have been here from this morning.

THE HONOURABLE MR. SURPUT SING : I think the House may be adjourned till to-morrow 9 o'clock in the morning.

THE HONOURABLE MR. G. S. KHAPARDE : Till 10 A.M.

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN : In view of what has been said by the Honourable Members, Government would not insist on the House sitting further to-day, because all the Members who are opposed to the measure desire that it should not be continued to-day. As for to-morrow, there seems to be consensus of opinion that we should sit earlier than 11 o'clock. Most of the Members have suggested 10 o'clock and a few a much earlier hour. But I think on the whole there is agreement on 10 o'clock.

THE HONOURABLE MR. V. RAMADAS PANTULU : I agree to 10 o'clock. That will suit us on this side.

The Council then adjourned till Ten of the Clock on Saturday, the 28th September, 1929.