

1st April 1937

THE LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume III, 1937

(15th March to 3rd April, 1937)

FIFTH SESSION OF THE FIFTH LEGISLATIVE ASSEMBLY 1937



PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI.
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, SIMLA.
1937

Legislative Assembly.

President :

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

Deputy President :

MR. AKHIL CHANDRA DATTA, M.L.A.

Panel of Chairmen :

SIR MUHAMMAD YAKUB, KT., M.L.A.

MR. S. SATYAMURTI, M.L.A.

SIR LESLIE HUDSON, KT., M.L.A.

SIR COWASJI JEHangIR, BART., K.C.I.E., O.B.E., M.L.A.

Secretary :

MIAN MUHAMMAD RAFI, BAR-AT-LAW.

Assistant of the Secretary :

RAI BAHADUR D. DUTT.

Marshal :

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions :

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

SIR LESLIE HUDSON, KT., M.L.A.

SARDAR SANT SINGH, M.L.A.

MR. M. GHIASUDDIN, M.L.A.

MR. MATHURADAS VISSANJI, M.L.A.

CONTENTS.

VOLUME III.—15th March to 3rd April, 1937.

	PAGES.
MONDAY, 15TH MARCH, 1937,—	
Questions and Answers	1909—19
Short Notice Question and Answer	1919—20
Motion for adjournment <i>re</i> Jute Mill Strike at Calcutta—disallowed by the Governor General	1921
Election of Members to the Public Accounts Committee	1921—26
Election of the Standing Committee on Roads	1927
Election of the Standing Finance Committee for Railways	1927
Election of the Central Advisory Council for Railways	1927
The Indian Oaths (Amendment) Bill—Introduced	1928
The Commercial Documents Evidence Bill—Introduced	1928—29
The Indian Finance Bill—Discussion on the motion to consider not concluded	1929—82
TUESDAY, 16TH MARCH, 1937,—	
Questions and Answers	1983—90
The Indian Finance Bill—Motion to consider adopted	1990—2058
WEDNESDAY, 17TH MARCH, 1937,—	
Questions and Answers	2059—64
Unstarred Questions and Answers	2064—70
WEDNESDAY, 17TH MARCH, 1937,—contd.	
The Indian Finance Bill—Discussion on the consideration of clauses not concluded	2070—2120
THURSDAY, 18TH MARCH, 1937,—	
The Indian Finance Bill—Discussion on the consideration of clauses not concluded	2121—78
FRIDAY, 19TH MARCH, 1937,—	
Member Sworn	2179
Questions and Answers	2179—86
Unstarred Questions and Answers	2186—87
The Indian Finance Bill—Discussion on the consideration of clauses concluded	2187—2233
Statement of Business	2233
SATURDAY, 20TH MARCH, 1937,—	
Member Sworn	2235
Questions and Answers	2235—41
Unstarred Questions and Answers	2241—47
Statements laid on the table	2247—50
Election of the Standing Finance Committee for Railways and the Public Accounts Committee	2250—51
The Indian Finance Bill—Recommended amendment negatived	2251—68

	PAGES.
SATURDAY 20TH MARCH, 1937,—<i>contd.</i>	
Demands for Supplementary Grants	2268—89
The Arya Marriage Validation Bill—Passed as amended	2289—95
Statement of Business	2295—96
Election to and Nominations for the Standing Committee for Roads	2296—97
TUESDAY, 30TH MARCH, 1937,—	
Members Sworn	2299
Questions and Answers	2299—2349
Unstarred Questions and Answers	2349—58
Statements laid on the table	2358—65
Motion for Adjournment <i>re</i> Banning by the Police Commissioner, Calcutta, of Processions, Meetings and other Demonstrations—Ruled out of order	2365—69 and 2382—84
Declaration by H. E. the Governor General	2369
Election of the Standing Finance Committee	2369—70
The Payment of Wages (Amendment) Bill—Introduced	2370
The Indian Tariff (Amendment) Bill—Introduced	2370
The Indian Oaths (Amendment) Bill—Circulated	2370—81
The Code of Civil Procedure (Third Amendment) Bill—Passed	2381—82 and 2384—85
The Indian Red Cross Society (Amendment) Bill—Passed	2385—94

	PAGES.
TUESDAY, 30TH MARCH, 1937,—<i>contd.</i>	
The Indian Soft Coke Cess (Reconstitution of Committee) Bill—Circulated	2384—2403
The Repealing and Amending Bill—Discussion on the consideration of clauses not concluded	2403—15
WEDNESDAY, 31ST MARCH, 1937,—	
Questions and Answers	2417—43
Unstarred Questions and Answers	2443—51
Motion for Adjournment <i>re</i> Racial Discrimination against Indian Members of the Military Medical Services in India—Adopted	2452, 2493—2510
Election of Members to the Central Advisory Council for Railways	2452
Election of Member to the Standing Committee for Roads	2452
Election of Members to the Standing Advisory Committee for Indian Posts and Telegraphs Department	2452—53
The Repealing and Amending Bill—Passed	2453—58
The Commercial Documents Evidence Bill—Circulated	2458—59
Report of the Public Accounts Committee on the Accounts of 1933-34	2459—93
THURSDAY, 1ST APRIL, 1937,—	
Members Sworn	2511
Motion for Adjournment <i>re</i> Firing by Police at Pani-pat—Disallowed by the Governor General	2511—12

PAGES.	PAGES.
THURSDAY, 1ST APRIL, 1937, — <i>contd.</i>	FRIDAY, 2ND APRIL, 1937, — <i>contd.</i>
The Indian Arms (Amendment) Bill—Motion to refer to Select Committee negatived . . . 2512—28	Message from the Council of State 2573
The Moslem Personal Law (Shariat) Application Bill—Referred to Select Committee 2528—44	Resolution re—
The Muslim Intestate Succession Bill—Circulated . . . 2544—46	Introduction of Homeopathic Treatment in Government Hospitals and Recognition of Homeopathic Colleges in India—Adopted . . . 2573—92
The Indian Subscriptions Bill—Discussion ruled out 2546—48	India's withdrawal from the Membership of the League of Nations—Discussion not concluded . . . 2592—2605
The Control of Coastal Traffic Bill—Discussion on the motion to refer to Select Committee not concluded 2548—52	
FRIDAY, 2ND APRIL, 1937,—	SATURDAY, 3RD APRIL, 1937,—
Display of Flags or Emblems on the tables of Honourable Members within the Assembly Chamber . . . 2553	Questions and Answers . . . 2629—33
Member Sworn 2553	Motion for Adjournment . . . 2633
Questions and Answers . . . 2553—58	The Insurance Bill—Appointment of Mr. J. A. Mackeown to the Select Committee in place of Mr. P. J. Griffiths . . . 2633
Short Notice Question and Answer 2558—61	The Indian Tariff (Amendment) Bill—Passed . . . 2633—38
Statements laid on the table . . . 2561—65	The Payment of Wages (Amendment) Bill—
Motion for Adjournment re Arrest of Congress Leaders and Volunteers in Delhi—Adopted . . . 2565—72 and 2605—27	Passed as amended . . . 2638—62
Election of Members to the Standing Advisory Committee for Indian Posts and Telegraphs Department 2572—73	Resolution re—
	Amendment of the Indian Legislative Rules—Postponed 2662
	Payment of the Depreciation Reserve Fund from the Railway Revenues—Postponed . . . 2663
	Report of the Public Accounts Committee . . . 2663—68

LEGISLATIVE ASSEMBLY.

Thursday, 1st April, 1937.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

MEMBERS SWORN:

Mr. James Cochrane Highet, M.L.A. (Government of India: Nominated Official); and

Mr. Alan Hubert Lloyd, C.S.I., C.I.E., M.L.A., (Government of India: Nominated Official).

MOTIONS FOR ADJOURNMENT.

Mr. President (The Honourable Sir Abdur Rahim): Motions for Adjournment. The first is in the name of Mr. Akhil Chandra Datta. That has been disallowed by the Governor General.

The next one is in the names of Dr. Deshmukh and Mr. Ghiasuddin. That was discussed yesterday.

The third one is in the name of Pandit Krishna Kant Malaviya. That was also disallowed by the Governor General.

FIRING BY POLICE AT PANIPAT.

Mr. President (The Honourable Sir Abdur Rahim): Then, the fourth one is in the name of Maulvi Syed Murtuza Sahib Bahadur. That notice was to this effect, that the Assembly do now adjourn for the purpose of discussing an urgent matter of public importance relating to the opening of fire by the police at Panipat which has resulted in the death of seven civil residents of the place.

That has also been disallowed by the Governor General. The Order is this:

"In exercise of the power vested in me by sub-rule (2) of rule 22 of the Indian Legislative Rules, I, Victor Alexander John, Marquess of Linlithgow, hereby disallow the motion of Maulvi Syed Murtuza Sahib Bahadur to move the adjournment of the House for the purpose of considering 'the opening of fire by the police at Panipat which has resulted in the death of 7 civil residents of the place' on the ground that the motion relates to a matter which is not primarily the concern of the Governor General in Council.

The next one is in the name of Mr. Avinashilingam Chettiar. He is not present today.

The next is in the name of Dr. Ziauddin Ahmad. That is covered by the Order of the Governor General.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): It is somewhat different from the motion of Maulvi Syed Murtuza Sahib Bahadur.

Mr. President (The Honourable Sir Abdur Rahim): That also relates to the firing at Panipat. So it is covered by the Order of the Governor General.

The last one is in the name of Mr. S. Satyamurti. He is not present.

THE INDIAN ARMS (AMENDMENT) BILL.

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the following motion moved by Mr. Lalchand Navalrai on the 11th February, 1937, namely:

"That the Bill further to amend the Indian Arms Act, 1878, be referred to a Select Committee, consisting of the Honourable the Law Member, the Honourable the Home Member, Sardar Sant Singh, Sardar Mangal Singh, Mr. M. S. Aney, Sir Muhammad Yamin Khan, Dr. F. X. DeSouza, Dr. N. B. Khare, Mr. Ghansham Singh Gupta, Babu Baijnath Bajoria, Bhai Parmanand and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Chair understands that four Members have already spoken.

Mr. Lalchand Navalrai (Sind: Non-Muhammadian Rural): Sir, I should

Mr. President (The Honourable Sir Abdur Rahim): The Chair thinks the Honourable Member has already spoken.

Mr. Lalchand Navalrai: I am not going to speak on the Bill itself, but I want to make a motion with a request to the Chair to adjourn the further discussion of this motion.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member cannot speak again, whether in the shape of a request to the Chair or in the shape of a motion for adjourning the debate.

Mr. N. M. Joshi (Nominated Non-official): May I, Sir, make that motion? I move:

"That the debate on Mr. Lalchand Navalrai's motion be adjourned till the next Session of the Assembly".

Mr. President (The Honourable Sir Abdur Rahim): What is the reason?

Mr. N. M. Joshi: The reason is, that this Bill is a very important one, and the House is very thin, and I don't think there will be a proper debate on the Bill. As there is no hurry about passing this Bill, I hope, Sir, the House will accept the motion I have made.

Mr. President (The Honourable Sir Abdur Rahim): The Chair cannot accept that motion unless it is satisfied that there are sufficient reasons in support of the motion. The Honourable Member says the House is very thin,—it will be very difficult to interpret it,—what is the meaning of that? That has never been held to be a proper ground for adjourning a debate.

Mr. N. M. Joshi: I can only say that if there is no opposition to my motion, it may be put; but if there is opposition, I would not. . . .

Mr. President (The Honourable Sir Abdur Rahim): The Chair has carefully considered the procedure as regards that, and it must be satisfied in the first place that there is a *prima facie* case for adjourning the debate.

Mr. Lalchand Navarai: Can I now speak?

Mr. President (The Honourable Sir Abdur Rahim): Yes, the motion has been moved.

Mr. Lalchand Navarai: Sir, this is a very important Bill which affects the whole of India. The entire Sikh community throughout India is affected by it. My point is that there has not been a full dress debate on the merits of this Bill. Last time, when I made the motion to refer the Bill to a Select Committee, only two speakers had the opportunity to speak on it,—not because that there were no other speakers to speak, but because the Bill came to be taken up at a time when the House was about to rise, and, therefore, several speakers could not speak. There are precedents in support of my request. I find, Sir, in this Book "Decisions from the Chair", at page 7,—a suggestion having been made that the consideration of the subject be adjourned, and a formal motion having been moved to that effect, the Deputy President remarked:

"It is entirely in the discretion of the Chair whether to grant a motion for adjournment or not."

Now, Sir, the principle of this Bill has already been admitted. If the Government are not prepared to agree to this Bill being sent to a Select Committee, but want to hear further debate, it would be only fair that an opportunity should be given to both sides to put their case fully before the House.

Mr. President (The Honourable Sir Abdur Rahim): What has prevented both sides from doing so?

Mr. Lalchand Navarai: I mean, the popular side as well as the Government side. Today the Members who are concerned with this Bill, namely, the representatives of the Sikh community specially, are not here.

An Honourable Member: Why?

Mr. President (The Honourable Sir Abdur Rahim): Why, if this is such an important Bill.

Mr. Lalchand Navarai: There may be grounds which they know best.

Mr. President (The Honourable Sir Abdur Rahim): Then, they do not attach special importance to this Bill.

Mr. Lalchand Navarai: I do not know. Some of the Sikh Members of my Party are absent. I do not know what their reason is. It may be that as the Congress has kept out, they are keeping out.

Mr. President (The Honourable Sir Abdur Rahim): This is a Bill which especially affects the Sikh community. The representatives of the Sikh community would be expected to be here.

Mr. Lalchand Navalrai: It may be that for unavoidable reasons they are not here. (Laughter.) I did not go and make enquiries why they had not come, why they were absent. But I do not find them in the House. I submit that this Bill was taken up at a late stage last time and that would be a fair ground for postponing it. I do not think that Government would be opposing this motion for adjournment, because I believe they also want to be fair to the Sikh community as a whole, especially when the principle is more or less admitted by them, and I do not think they will object.

Mr. President (The Honourable Sir Abdur Rahim): Then, they can let the Bill go to the Select Committee.

Mr. Lalchand Navalrai: That is exactly what I am saying. They may either agree to that; if not, if they want to be satisfied still more, I think it is only fair that time should be given for them to be satisfied. I find here a ruling. The Finance Member was not present and the Chair ruled:

"I imagine that a debate on currency and finance conducted in the absence of the Finance Member would be a remarkable case of the play of Hamlet without the Prince of Denmark."

The Sikh representatives are not here; they would play a very important part in this debate.

Mr. President (The Honourable Sir Abdur Rahim): Sardar Sant Singh has already spoken.

Mr. Lalchand Navalrai: But there is Sardar Mangal Singh, and there are other people also who may like to speak.

Mr. President (The Honourable Sir Abdur Rahim): Who has prevented them from being here?

Mr. Lalchand Navalrai: I do not say that the House has prevented them, but any way the question that has to be considered is that they have not wilfully done it. My point is this, it is not because they wanted that this Bill should be doomed that they are absent. That is not the reason. They may have their own reason, their own conscience. At any rate, I submit that when a Bill is taken up at a very late hour and there was no opportunity on that day to finish and when it comes on for discussion the next day, there should be an opportunity given to the House to have a full debate. Members not being here, it is not possible that there could be a full debate. In that case I think that it would be only fair for the Chair to exercise discretion.

Mr. President (The Honourable Sir Abdur Rahim): There is no such absolute discretion in the Chair.

Mr. Lalchand Navalrai: It is with that idea that I read out page 7.

Mr. President (The Honourable Sir Abdur Rahim): The Chair does not hold that there is a discretion. The Chair thinks it has made it clear that there is no such discretion.

Mr. Lalchand Navalrai: If there is no discretion, then it may be put to the House.

Mr. President (The Honourable Sir Abdur Rahim): When it has been debated—the Chair means the Bill. The Chair cannot allow this motion for adjournment, because no sufficient reason has been adduced as to why the debate on this Bill should be adjourned. Mr. Lalchand Navalrai has advanced the argument that there are not a sufficient number of Members, who are interested in the Bill, present today, to participate in the discussion. But he does not explain why if those Honourable Members are really interested in the Bill they are not present in order to discuss it. No other reason has been advanced, and the Chair, therefore, holds that there is no *prima facie* case made out for the Chair to put the motion to the House. Mr. Lalchand Navalrai has referred to a ruling of a Deputy President on another occasion that there is absolute discretion in the Chair whether to accept a motion like this or not. But the Chair is not aware that there is any authority for such a statement. On the other hand, the Chair knows that it has been frequently ruled in the Parliament that the Chair will not put such a motion to the House unless it is satisfied that there are sufficient and good grounds for thinking that the Bill cannot be properly considered for some reasons which have emerged, such as want of some necessary information or the like, and not for a reason like this that there are not a sufficient number of Members present today who are interested, to take part in the further discussion of the Bill. The Chair, therefore, holds that it cannot allow this motion for adjournment of the debate and the discussion on the motion for reference to a Select Committee will, therefore, continue.

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): I rise to oppose this motion. On the first day, when this Bill came up for first reading, I pointed out that the sword and *kirpan* should be placed on one and the same level . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member did not finish his speech on the last occasion?

Mr. Lalchand Navalrai: I think he had.

Mr. President (The Honourable Sir Abdur Rahim): This is the original motion now under consideration, not the motion for adjournment.

Sir Muhammad Yakub: I am sorry, Sir. I thought this was a different motion.

(No other Member rose to speak.)

Mr. President (The Honourable Sir Abdur Rahim): What about the Home Member? He is not here. If there is no other Member to take part in this discussion, the Chair will have to put the motion to the House.

Mr. J. A. Thorne (Government of India: Nominated Official): The Honourable the Home Member will be in in a minute, Sir.

The Honourable Sir Henry Craik (Home Member): I am afraid Government must oppose this Bill. I should not have objected to the postponement of the discussion, but I recognise that that is entirely a matter for the Chair and not one in which Government are concerned. I think it is necessary for me, with your permission, to go at some little length into the history of this piece of legislation. It has been before the Assembly now for some three years. A similar Bill was originally introduced as long ago as February, 1934, the object being to secure unrestricted freedom to Sikhs to possess and carry *kirpans* of any length throughout British India. Now, the history of this matter is in brief that in 1914 the Punjab Government obtained the approval of the Government of India to the exemption from all provisions of the Arms of "*kirpans* possessed or carried by Sikhs in the Punjab". The considerations urged in favour of that complete exemption were that the *kirpan* is a religious emblem, is normally only carried, I am speaking of 1914—28 years ago—, on ceremonial occasions and had never been known to be used as a weapon of offence or defence. That, I am afraid, is not true now. The Punjab Government also mentioned the fact that at that time the *kirpan* was usually a miniature one, not more than a foot in length. The Local Government considered whether in giving this general exemption any limitation should be put on the length of the *kirpan*, but they decided that such a limitation might be resented, as implying that the *kirpans* would be used as an offensive weapon, and they also held that if it came to the point where a *kirpan* was used as an offensive weapon, it made very little difference whether it was a few inches longer or a few inches shorter, and that it would still be a dangerous weapon. That exemption given in the Punjab was gradually extended before very long to other provinces, and in 1917, the Government of India made the exemption general throughout India. But after 1917, in the year 1920, the Arms Act rules were revised and Local Governments were under the revised rules given the right to impose such restrictions as they might find necessary on weapons of this character, and as a result of that discretion allowed to Local Governments, the position now is that while *kirpans* are exempt from the provisions of the Arms Act throughout British India, the Bombay Government have framed rules limiting their length to nine inches while the Government of India have issued a similar rule in regard to Burma, though as Burma is no longer part of India, that is not a relevant consideration. In the Punjab and in most other provinces, as I have explained, there is no limitation. Now, I have this much sympathy with the object of my Honourable friend, the Mover, that I do admit that it might conceivably be a source of inconvenience to a Sikh resident in the Punjab who travels to Bombay to find that while he can carry a *kirpan* of any length in the Punjab, he cannot carry in Bombay a *kirpan* of more than nine inches in length unless he has a licence, and if he did so, he would in strict law be liable to a penalty on crossing the border into the Bombay Presidency. At the same time, I doubt very much whether the practical inconvenience is really very great. No concrete instances have, so far as I am aware, been brought forward where a Sikh travelling from the Punjab into Bombay actually did come into conflict with the law.

Mr. Lalchand Navalrai: There have been several cases of that nature both in Bombay and Sind.

The Honourable Sir Henry Craik: I take it from the Honourable Member that there have been such cases, but I imagine that most of them have been dealt with by the infliction of a nominal fine or a warning or something of that kind.

Mr. Lalchand Navalrai: In Sind, imprisonment of three or four months was awarded.

The Honourable Sir Henry Craik: I am bound to say that I do not want to dispute what the Honourable Member says, but no such cases have ever been brought to my notice. On the other hand, there are certain important considerations which make it impossible for Government to accept the principle underlying this Bill which would have the effect of depriving Local Governments of their discretion in the matter of imposing restrictions on this particular type of arm, however critical the circumstances of the place where it is proposed to impose such restrictions might be.

Now, I have explained that when this exemption was first introduced by the Punjab Government, it was stated in 1914 that the *kirpan* had never been used as a weapon of offence or defence. That statement, I am very sorry to say, is no longer true. It is very far from being true. I have here a statement of the number of cases in which *kirpans* have been used in recent years as weapons of offence. In 1935 and the first eight months of 1936, there were no less than 187 crimes of violence in which the weapon of offence was the *kirpan*—187 in less than two years in the Punjab alone. Of that very formidable number, no less than 48 were murders committed with *kirpans* and in addition to 48 actual murders, there were 17 other cases of attempted murder, and there were 32 cases of grievous hurt. In addition there were 35 cases of simple hurt, and no less than 60 other cases in which *kirpans* were used as weapons of offence in riots and dacoities. I think the House will agree that that is a fairly formidable total—187 cases in a period of 20 months,—and of those the majority were not communal cases at all; only fifteen of them were communal cases; the others were ordinary cases of murder, attempted murder, dacoity, riot and the like. That disposes of the point that the *kirpan* is not a weapon of offence or defence.

Then I take the second ground advanced by the Punjab Government in favour of the exemption in 1914. It was then stated—and indeed it is within my own personal experience—that at that time, twenty-three years ago, the *kirpan* was normally a weapon of a miniature type, indistinguishable from a small dagger. In fact when I first came to India, nearly forty years ago, the ordinary *kirpan* was a weapon about that length, three or four inches long, usually worn by a Sikh in his *keshas* or anyhow not worn publicly at all, it was stuck in his *keshas* or sometimes worn in his pocket. The subsequent tendency has been to develop their size to such an extent that the *kirpan* is now indistinguishable from a sword. In fact I myself arrested a man who was carrying what he called a *kirpan*. That was somewhere about 1920, and I took the weapon away from him. It was an ordinary cavalry sword. When I took it out of its scabbard, it had the name of the cavalry regiment stamped on the blade. (Laughter.) It was a sword that had been used by a soldier of a cavalry regiment and given to him on retirement. It had got a hilt, a hand-guard, a scabbard

[Sir Henry Craik.]

and so on and in fact it was an ordinary cavalry sabre. Now that was claimed to be a *kirpan* (Laughter); and I believe there are judicial decisions to the effect that a sword carried by a Sikh, if he says it is a *kirpan*, is a *kirpan* and it comes under this exemption. In other words, Sikhs may wear a sword. Now let us see what its effect was on other communities. I believe I am right in saying that now, in the Punjab, swords are also exempt—my Honourable friend will perhaps confirm me—but in certain districts till a year or two ago, no one was entitled to possess or at any rate to carry a sword unless he had a license. Am I right?

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): I think so.

The Honourable Sir Henry Craik: Now, a general exemption has been given and anybody can carry a sword without a license. So in respect of swords, all sections of the population in the Punjab are on an equality. But that is not the case in other provinces. I believe in Bombay and I think in Sind also, a sword is not exempt.

Mr. Lalchand Navalrai: A sword formerly was allowed to be possessed, but now, very recently, they have made an order that there should be a license.

The Honourable Sir Henry Craik: Exactly, that is my point; that is to say, that in Bombay and I think in Sind also, a Sikh may carry a sword of any length, but a non-Sikh may not unless he has a license. That is the effect of the exemption in Bombay.

Mr. Lalchand Navalrai: A Sikh is not allowed to carry a sword in Bombay.

The Honourable Sir Henry Craik: If your Bill is passed, a Sikh would be under no sort of restriction in regard to the length of his sword in Bombay, whereas a non-Sikh would.

Mr. Lalchand Navalrai: It would be with regard to the *kirpan*,—not the sword.

The Honourable Sir Henry Craik: But the *kirpan* is a sword.

Mr. Lalchand Navalrai: It is not a sword.

The Honourable Sir Henry Craik: I am quite confident that there have been judicial rulings that the length of the weapon makes no difference, and that if it is claimed to be and worn as a *kirpan*, a sword is exempt, whatever its length—here again my Honourable friend probably knows the law better than I do

Syed Ghulam Bhik Nairang: I think you are right.

The Honourable Sir Henry Craik: . . . is exempt; there are High Court rulings on the point

Mr. Lalchand Navalrai: Only in the Punjab.

The Honourable Sir Henry Craik: They will be applied in the other provinces.

Mr. Lalchand Navalrai: I am only asking this for *kirpans*.

The Honourable Sir Henry Craik: I have made it clear that, if this Bill were passed into law, that inequality of treatment as between Sikhs and non-Sikhs would come into existence in certain parts of India. But apart from that, there is another grave objection to this Bill. As I have said, Sir, I have not been convinced that any practical inconvenience or hardship has resulted from the apparent anomaly which the Bill seeks to remedy. I am assured that there have been cases where people have been prosecuted, but all I can say is that those cases have not come to my personal notice. There is nothing to show that Local Governments have in fact abused the right which they possess of imposing restrictions upon the carrying of *kirpans*, should circumstances so demand it. If this Bill were passed, the effect would be that in a time of severe communal tension, when a Local Government or a district magistrate thought it necessary to forbid the carrying of weapons, they could not in practice disarm a Sikh of his *kirpan*, but they could disarm other sections of the population and deprive them of the right of carrying weapons. Now to deprive the Local Government of that power would be, I submit, to deprive them of a very valuable weapon in their armoury for the maintenance of law and order in times of stress. Even as long ago as 1914, when the Punjab Government first proposed this exemption, they made it quite clear that occasions might arise when it would be necessary to withdraw the exemption which they then proposed. An instance of the kind of occasion on which it might be necessary for Local Governments to withdraw this exemption was the very terrible communal riot that took place in Cawnpore in 1931. At that time, it will be within the recollection of the House there was a most terrible massacre; a great many lives were lost, and it became necessary for the Local Government to impose restrictions on the carrying of weapons of all kinds,—swords, axes, spears, and so on.

Mr. Lalchand Navalrai: Also *kirpans*?

The Honourable Sir Henry Craik: Yes. But if this Bill were passed, a Local Government would not be able to impose that restriction on the carrying of *kirpans*. That is my point and that is my objection to the Bill. What justification is there for depriving Local Governments of the power of imposing restrictions on the carrying of this weapon, which as I have shown, has in numerous cases been used for deadly purposes, in times of grave disorder or disturbance? That, Sir, is the ground why Government must oppose this Bill. We cannot agree to such an absolute prohibition being imposed on the rights of Local Governments to control the carrying of weapons of one particular kind but not of other kinds within their jurisdiction. That is all I have to say.

Mr. Lalchand Navalrai: Sir, I really find myself in a helpless position. On the one side I find the Government as a body opposing my Bill, and on the other side I find most of my Muhammadan friends also opposing it. Sir Muhammad Yakub has already opposed it. I have yet to see which Muhammadan Honourable Members support me when the division takes place.

Sir Muhammad Yakub: All the Muslim Members will oppose it.

Mr. Lalchand Navalrai: It should not come from your mouth: some of them will demur. I will take it from them and not from you alone because you always oppose matters like this and that is no wonder to me.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better address the Chair.

Mr. Lalchand Navalrai: It is very unfortunate that the members of the Sikh community should have kept themselves away from this House. I do feel that if all the members were here today, Government's attitude would not have been one which they have taken today. At any rate, the Bill would not have been thrown out at this very early stage when the Government ought to have shown sympathy and more consideration with regard to a question which is said to be a religious question. It should not have been lightly disposed of by saying that the *kirpan* is not a religious emblem. However, I will try to make the best of the situation and will put the whole matter before the House in the hope—though it has become a despair—that Government should consider that what I am now asking is not the passing of the Bill but a full consideration of this Bill. As I will show presently, the principle has for a long time been admitted that the Sikhs have a right to carry a *kirpan* which is a religious emblem and it has also been admitted that the Sikhs do carry it and possess it for purposes of their religious ceremonies. It would be injuring the feelings of the Sikh community as a whole to say that the *kirpan* nowadays, after its use for years and centuries, has become only a weapon of offence. What I submit is this that it seems to me that the attitude that is being taken by the Government at present is not a reasonable one. The history which my Honourable friend, the Home Member, has given also shows that it has been deliberately decided from time to time that the Sikhs are entitled to wear this weapon throughout the whole of India. Even before the year 1919, I find that there is a Resolution of Government, No. 950, dated Simla, the 25th June, 1914, which shows that the Government made an amendment in the rules and said that in Schedule II, after the entry relating to the United Provinces of Agra and Oudh, there should be inserted the following, namely; "The Punjab: *Kirpans* possessed or carried by Sikhs: All." That would show that even before 1919 the Sikhs in the United Provinces of Agra and Oudh were exempt to wear *kirpans* of any size and this rule was afterwards extended to the Punjab in 1914. Even if the *kirpans* which were used at that time were of a smaller size, were they not capable of causing an offence or not? Take the ordinary pen-knife or the butcher's knife. Are they exempt or not? And can they not be used for an offence? Therefore, to say that this *kirpan* has now become a weapon of offence is absolutely wrong. If the Government are going to say that *kirpans* should not be worn or possessed or carried even as a religious emblem because there is a possibility of their being used as weapons of offence, then anything can be used as a weapon of offence. Now, Sir, what I mean to say is that in 1914 exemption was given to the Punjab. What do we find further. On the 17th July, 1914, another Notification, No. 1118, was issued which said that the Governor General in Council was pleased to direct that the following amendments shall be made in the Arms Act of 1919, namely:

"In Schedule II, after the entry relating to Coorg, the following shall be added: The province of Delhi: *Kirpans* possessed or carried by Sikhs: All."

Now, the exemption was extended to Delhi also in addition to the other provinces which I have already mentioned. What I am going to show is that it was not in a hurry or without full consideration that the Government extended this exemption to different provinces but when the same exemption is being asked for Bombay, they say that the *kirpan* has become such a dangerous weapon that it is likely to be used in riots as if knives and other similar weapons are not being used in riots. Then, again, in 1914, it is said:

"In Schedule II in the second and third columns against entry (a) relating to the province of Burma, after item (5) the following shall be inserted, namely: *Kirpans* possessed or carried by Sikhs. All."

Then, again, in 1917, there was a letter from the Secretary to the Government of the United Provinces to the Secretary of the Chief Khalsa Diwan in the following terms:

"With reference to the correspondence ending with your letter No. 639, dated the 1st February 1917, I am directed to inform you that the necessary orders have been issued by the Government of India, exempting *kirpan* possessed or carried by Sikhs, within the area of the United Provinces."

Now, this privilege was extended to the United Provinces also and all prohibitions and restrictions under the Arms Act were removed.

Then, Sir, there is another letter in 1917 to the Chief Khalsa Diwan which says:

"In reply to his letter No. 40, dated 29th January 1917, the undersigned is directed to inform the Honorary Secretary, Chief Khalsa Diwan, Amritsar, that under the Government of India, Home Department Notification No. 963, dated the 3rd November 1916 *kirpans* possessed or carried by Sikhs in the N. W. F. P., have been exempted from all directions and prohibitions contained in the Arms Act."

Now, Sir, in a place where the Government say that these riots are going on, where tribal disputes are still there, you allow the Sikhs to have *kirpans* all through.

Next is a copy of a letter from Mr. Young, the Under Secretary of State for India which says:

"I am directed to acknowledge receipt of your letter No. 2377, dated the 10th June 1917, conveying the thanks of the Sikh community for the exemption of *kirpans* throughout British India from the operation of the Arms Act, 1878."

Then, the whole of India was exempted. Was this a deliberate decision or not? Did Government think at that time that it will be wrong to give exemption to the whole of India. I am only claiming as much as was given then. What are the reasons given now for this ban. No reasons are given.

Then, again, I find a letter which exempts *kirpans* possessed and carried by Sikhs throughout British India and this letter is dated 19th May 1917. It is said there:

"The entries referring to *kirpans* in items Nos. 9, 10, 11 and 16 areas United Provinces, Punjab, Burma, N. W. F. P. and Delhi Provinces, respectively, shall be deleted."

That means it will apply now in all these particular provinces. It was also exempted in the whole of India.

We find that in 1920 the Government considered that these *kirpans* were swords. There is a case reported in All India Rulings, 1930, Bombay High Court, page 153. At that time some confusion arose with regard to

[Mr. Lalchand Navalrai.]

the column under which *kirpan*, would come, whether it would come under 'sword' or under 'arms'. If it was under 'arms' then the general notification and the orders issued under the Arms Act were that it is allowed everywhere. But if it comes under 'sword', then there comes the difficulty. In 1920, the Government considered that in some cases *kirpans* were swords. Then agitation went on and in 1925 under the ruling I have quoted just now the column was changed and the *kirpans* were taken away from the column of "sword" and it was again put under 'arms'. Therefore, in 1925, *kirpans* became exempt. What has happened? According to this we find that in 1925 in the whole of India the Sikhs would possess and carry *kirpans* without any license. Thereafter it seems only in Bombay and nowhere else was this restriction made. Of course the Honourable the Home Member now says there is restriction in Burma also. But Burma is separate from India from today, and, therefore, the Sikhs there will take care of themselves. I would ask why even Burma should have this restriction. There ought to be no restriction in respect of these *kirpans* at all.

Now, the Honourable the Home Member would like to throw the burden on me and in his reply he says that the data have not been supplied to him to show that the Sikhs in Bombay and Sind are being dealt with in regard to the possession and carrying of *kirpans* in a cruel manner. He wants to throw that burden on me. I tell him that it is his duty to send for all these cases which were disposed of in Sind courts and in Bombay courts. He will find that the magistrates there are taking a very strict view about these *kirpans* and people who possess *kirpans* are sentenced to long terms of imprisonment. I know personally one instance of a Sikh who came recently from the Punjab with a *kirpan* just one foot long. The Honourable the Home Member says that up to one foot *kirpans* are allowed. But in this instance the Punjabi had a *kirpan* which was just one inch or half an inch more than nine inches and he was arrested in Nawab Shah station. I got representations from them that he was awarded long term imprisonment, he was not fined. My Honourable friend seems to think that these magistrates in Bombay and Sind are very sympathetic. I know they merely follow the behests of the police. If the police says no, these *kirpans* must be rigorously stopped by sending the culprits to long terms of imprisonment, the magistrates dare not do otherwise. I, therefore, submit there is real difficulty. The Honourable Member says that swords should not be carried, that sword is a sword. If there has been one single instance which the Honourable the Home Member found personally as he says that it was a military weapon, that it was a long one like the sword and which was being carried by a Sikh, it cannot be possibly said that the Sikhs want that they will carry swords in that manner and say that they are *kirpans*.

The Honourable Sir Henry Craik: They did claim that right in this instance.

Mr. Lalchand Navalrai: At any rate the Honourable Member gave typical instances which I am now criticising. Why is it that they should be allowed to carry it in the Punjab and not in Bombay? The whole thing reduces itself to this. In all other parts of India, the Provincial Governments have allowed that the Sikhs could carry *kirpans* as well as swords. Why is it that in Bombay alone and in Sind these restrictions should be there. Is it because the Sikhs are not powerful there, that they do not

move the administration there and press upon the Government to come to their senses, as I would call it. I would submit this is wholly wrong to say that the Local Governments should have that power in Bombay and Sind alone. There ought to be a universal law. The Sikhs in Bombay and in Sind are not of a different type or of a different character that they will make wrong use of their *kirpans*. These *kirpans* are primarily religious emblems. I am informed that the Sikhs who go out leaving their *kirpans* at home will not take their meals unless and until they bring *kirpans*. This shows the religious fervour with which the Sikhs look upon the *kirpans*. I, therefore, submit that the Government should not take advantage of the absence of some non-official Members from this House and defeat this measure. It is a wrong way of doing things and it will not denound to their credit. My Honourable friend has not given one instance to show that *kirpans* are used in Bombay and Sind in such a way that they should be an exception. Is it the idea that it should be first applied to Bombay and then to the Punjab and elsewhere? If so, it is a wrong idea. Therefore, I submit that it would be only fair to let this Bill go to Select Committee where all points of view may be considered. The Honourable the Home Member himself admitted that he does not know all the facts about prosecutions, etc. That is all the more reason why it should go to the Select Committee and be considered there in all its details. I expected this debate to be postponed today. That it has not been postponed is no fault of Government's; but I have not been able to get typical cases to show how these men are cruelly punished. If a man carries a *kirpan* which is one inch or half an inch over nine inches he is punished; and that is very hard and merciless.

Nowadays we often find Government Resolutions taking away or cur-
 12 Noon. tailing or giving a certain privilege. Why should Bombay be singled out for this power? Is it because it is very far away and the orders of Government will not reach there or will not be respected? It is not so. The power should remain as it is with the Government of India but the Arms Act with regard to *kirpans* should be uniform all over India; unless they were to say that people should not carry *lathis* or pen-knives. There is no restriction in the Punjab, why should there be a restriction in Bombay and Sind? Sir, I appeal to Government to be more sympathetic to the Sikhs, specially when they claim it as a religious emblem,—a fact which Government themselves have admitted. The rule is that once the principle is accepted, it should go to the Select Committee. Here the principle is already admitted as I have shown from the regulations and the ruling I have quoted. Therefore, there is no reason why it should not go to the Select Committee. There the question will be considered whether Bombay and Sind should be excluded from this privilege. There was a Burman Sikh here; I have no doubt he will see that this restriction is not imposed in Burma. Let it be considered in the Select Committee in detail as regards the size of the *kirpan*, etc., and when after that it comes up to this House, we can fully consider it in all its aspects.

The Honourable Sir Henry Craik: Sir, have I your permission to make one or two observations in reply?

Mr. Lalchand Navarai: Can the Honourable Member speak at this stage?

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member looks up the Standing Order, he will find that the Chair has the discretion in special cases. The Chair understands the Honourable Member wants to explain certain particular points, and it allows him to do so.

The Honourable Sir Henry Craik: I will not detain the House for more than a few minutes. I would like to point out that in one or two respects the Honourable the Mover has misunderstood the objection which Government take to this Bill. In the first place, my Honourable friend said that if the House had been full the attitude of the Government would have been different. I can assure him that on that point he is mistaken . . .

Mr. Lalchand Navalrai: At any rate my success would have been different!

The Honourable Sir Henry Craik: That is another matter. The attitude of Government with regard to this Bill was determined three years ago, and the Honourable Member was informed yesterday that if you, Sir, were agreeable to his proposal that the debate should be deferred till the House was more largely attended, Government would raise no objection to that proposal.

The second point is this: that the Honourable Member has, I think by implication, accused me of treating the *kirpan* as a weapon of offence and not as a religious emblem. That is very far from being my attitude. I agree—it has never been denied—that the *kirpan* is a religious emblem of the Sikhs and that they are enjoined by their Guru, Granth Sahib, to carry it. That has never been denied at all; but the point is this: that there are various other weapons which are claimed to be religious emblems and which are capable and are on occasion used as weapons of offence. For example, there is a certain sect of Sikhs that claim that it is their religious right and duty and obligation to carry an arrow. I have seen a claim seriously put forward on behalf of Muslims that their religion enjoins on them the carrying of the sword. That may or may not be so; but the point is that because a particular thing is a religious emblem, that does not make it impossible to be used as a weapon of offence; and I have shown that as a matter of fact in the Punjab, in recent years, the *kirpan* has frequently, regrettably often, been used as a weapon of offence.

On the main point of Government's opposition to this Bill, the Honourable the Mover has spoken as if the only object of this Bill was to remove an anomaly that at present exists in the Bombay Presidency and in Sind. That as a matter of fact would not be the only or even the more important effect of the Bill. I have already admitted that an anomaly exists, though I think its inconvenience has been over-stated. Till a few years ago, for example, in my own province, the Punjab, swords were exempted in some districts and not in others. I think I am right in saying that swords were prohibited in Ferozepur and Lahore districts and permitted in the adjoining districts of Sheikhpura, Gujranwala and Jullunder; but no practical inconvenience arose so far as I am aware: people were well aware of it and if a man happened to be wearing a sword in one of these exempted districts, he was not such a fool as to carry it into a district where he knew the exemption did not exist. Similarly, in the case of Sikhs residing or travelling in Bombay and Sind, a very large number of Sikhs are colonists in Sind; but I have never heard that they are exposed to any inconvenience: they know the rule and they adapt themselves to it: they use a short *kirpan* when they are residing there

Mr. Lalchand Navalrai: I am sorry the Honourable Member has not kept himself awake to know that there have been cases of considerable inconvenience.

The Honourable Sir Henry Craik: Possibly the Honourable Member is better informed than I am. I happen to have a good many Sikh friends who reside in Sind and who constantly come to see me and not one of them has ever mentioned it. Some of them come and see me as often as once every two or three months and tell me how they are getting on but they never mentioned to me this difficulty about *kirpans*. Anyhow that is a minor effect of the Bill. I admit the anomaly exists; and if it was only a question of correcting that anomaly I would have no objection to this Bill. But this Bill goes much further than that: as I have explained, it takes away the power of the Local Government to put restrictions on *kirpans* and

Mr. Lalchand Navalrai: Will the Honourable Member write to Bombay and Sind to lessen that inconvenience?

The Honourable Sir Henry Craik: I will certainly point out the matter to them: I shall send them a copy of this debate. As I say, the Bill deprives the Local Government in any circumstances, even in times of the gravest civil disorder, of placing any restriction on the carrying of *kirpans*, whereas it will have that power in respect of any other type of weapon, and I think that in itself is sufficient to show that this Bill should not be accepted. The principle of the Bill is wrong; and we would be agreeing to the principle if we allow it to go to Select Committee. It might be altered there, but it would mean that we accept the principle of the Bill and I am afraid I cannot accept the principle.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Indian Arms Act, 1878, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Sardar Sant Singh, Sardar Mangal Singh, Mr. M. S. Aney, Sir Muhammad Yamin Khan, Dr. F. X. DeSouza, Dr. N. B. Khare, Mr. Ghansham Singh Gupta, Babu Baijnath Bajoria, Bhai Parmanand and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

(A division was claimed).

Mr. President (The Honourable Sir Abdur Rahim): The Chair will ask the Honourable Members, who are for the motion, to rise in their places.

(Four Honourable Members rose in their seats.)

Mr. N. M. Joshi: On a point of order, Sir, I ask for your ruling. Sir, the Standing Orders give you full discretion as to the method of dividing, but I feel that if you merely ask people to stand up in their seats, the purpose of the division will not be served.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has the discretion, though it seldom exercises it. But the Chair thought this was a very typical case.

Mr. N. M. Joshi: May I put my difficulty before you, Sir? The object of a division is two fold: the first object is to find out which side has a majority, and the second object is to put on record which Members

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member likes, the Chair can have the count taken here.

Mr. N. M. Joshi: If the names of the Members who rose in their seats are taken down, then the object of the division is served.

Mr. President (The Honourable Sir Abdur Rahim): Then the Chair will have it done.

Mr. N. M. Joshi: Thank you, Sir.

Mr. President (The Honourable Sir Abdur Rahim): The Chair understands the practice is

Mr. N. M. Joshi: May I explain what I want? In a legislature where people are sent

Mr. President (The Honourable Sir Abdur Rahim): The Chair does not want a long argument; it is a question of its discretion. If the Honourable Member can cite any Standing Order which gives him the right to have a division or to have the names taken down, the Chair will certainly consider it.

Mr. N. M. Joshi: I am explaining my difficulty. After that, if you can give your ruling, I have no objection.

(At this stage, several Honourable Members interrupted Mr. Joshi.)

Mr. N. M. Joshi: I have a right to be here, and I do not like interruptions by Members. My point is this. It is very necessary for the electorates to know how their representatives have voted on a particular question, and if their names are not recorded, then that purpose is not served. It is very wrong that people should vote and their names should remain unrecorded.

Mr. President (The Honourable Sir Abdur Rahim): Then, the Standing Orders ought to be changed.

Mr. N. M. Joshi: The Standing Order gives you the power to decide the method of dividing the House, but the mode should be such that the names of Members should be recorded so that the electorates may know how their representatives have voted.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has been in this House for a very long time, and I should like to know if he can give me any case in which names were taken down . . .

Mr. Lalchand Navarai: May I say a word on that, Sir? I have been here since

Some Honourable Members: Order, order.

Mr. Lalchand Navarai: I want an order from the Chair, and not from you.

Mr. N. M. Joshi: He has a right to be heard.

Mr. President (The Honourable Sir Abdur Rahim): The Chair wants information on the point whether the Honourable Member knows of a case in which the names had been taken down when the Chair was acting under Standing Orders 32 and 33.

Mr. N. M. Joshi I don't remember any case at the moment, Sir, but what I would like you to consider is this,—this is a very important matter. If you think that you need not decide this matter today, I shall not insist on it, but what I would like you to consider is, whether the electorates have no right to know how their representatives have voted on a particular question in this House. They have a right to know how their representatives have voted on a particular occasion, and that purpose will not be served by the method you adopt. I hope, Sir, you will take this matter into your serious consideration.

Mr. President (The Honourable Sir Abdur Rahim): (After going through the rulings): The Chair finds their names were taken. The Chair thinks there is a ruling in support of the suggestion made by Mr. Joshi, but only the names of those who had supported the motion had been taken down, and not of the others. The Chair will have it done on this occasion. This is Ruling No. 670.

It is stated here:

"The President ruled:—'As the time at our disposal is limited, I propose to adopt a different procedure on the present occasion in regard to the division which has been claimed. I will ask those who are in favour of accepting the closure to rise in their seats and I will call out their names which will be taken down by the official reporter'. After these names had been taken down, those against the closure were asked to stand: a large number of Members standing up, the President said that it was not necessary to take down the names and declared the closure motion negatived: Mr. Ranga Iyer wanted to know who exactly were the supporters of the Communal Award as several Members were neutral.

The President:—'The Chair has given its ruling and has taken down what it thinks is a fair record'."

The Chair will follow this ruling. Will Honourable Members who are for accepting this motion rise in their seats again?

Mr. Lalchand Navalrai: Before you ask Members to rise in their seats, I would request you to follow the ordinary procedure in regard to divisions, and that is for Members to go into the division lobby and give their votes. I would therefore ask you to kindly reconsider the point and allow us to go into the division lobbies.

Several Honourable Members: No, no.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has given its ruling, and it thinks it has been done on more than one occasion. The Chair is, therefore, following the ordinary course. Will those Honourable Members who are for accepting the motion rise in their places?

(The following Members then rose in their seats:

Babu Baijnath Bajoria.

Mr. M. Ghiasuddin.

Bhai Parmanand.

Mr. Lalchand Navalrai.)

Mr. N. M. Joshi: Sir, what happens to me? I have absolutely no vote. I am not voting either for or against. How will my attitude be known?

Mr. President (The Honourable Sir Abdur Rahim): Those who are against the motion will rise in their seats.

(A large number of Honourable Members rose in their places.)

The motion was negatived.

THE MOSLEM PERSONAL LAW (*SHARIAT*) APPLICATION BILL.

Mr. H. M. Abdullah (West Central Punjab: Muhammadan): Sir, I beg to move:

"That the Bill to make provision for the application of the Moslem Personal Law (*Shariat*) to Moslems in British India be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, the Honourable Sir Muhammad Zafrullah Khan, Maulvi Syed Murtuza Sahib Bahadur, Maulana Fhaikat Ali, Qazi Muhammad Ahmad Kazmi, Dr. Ziauddin Ahmad, Sir Muhammad Yamin Khan, Syed Ghulam Bhik Nairang, Khan, Bahadur Sheikh Fazl-i-Haq Piracha Nawab Sahibzada Sir Sayad Mehr Shah, Maulvi Badrul Hasan, Khan Sahib Nawab Siddique Ali Khan, Mr. M. Asaf Ali, Dr. G. V. Deshmukh, Sir Muhammad Yakub, Mr. Muhammad Azhar Ali and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, as I am indisposed today, I would try to be as brief as possible in my speech and would not dwell upon each detail of the Bill at length, but confine my remarks only to more important provisions and other salient features. The object of the Bill is that in all questions regarding succession, special property of females, betrothal, marriage, divorce, maintenance, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, etc., the rule of decision in cases, where the parties are Muslims, shall be the Muslim Personal Law (*Shariat*) although there may be a custom, usage, or law to the contrary. Sir, the present position among the Indian Muslims in respect of the matters mentioned above is that in most provinces they are already subject to the Shariat Law except as regards the Law of Succession which varies not only from province to province but from tribe to tribe in the same province. In Bengal, Assam, Burma, N.-W. F. P., Bihar, Orissa and a part of the U. P., the Muslims are governed by the Shariat Law in the matter of succession. In the C. P., Madras, Bombay, a part of the U. P., Baluchistan, and Ajmer they are mostly under the Customary Law. In the Punjab, the agricultural classes are subject to the Customary Law, while the non-agricultural classes residing in the cities are mostly subject to the Shariat Law. The Bill aims at securing uniformity of Law among Muslims throughout British India in all their social and personal relations. By so doing it also recognises and does justice to the claims of women for inheriting the family property who under the Customary Law are debarred from succeeding to the same. If Shariat Law is applied they will automatically become entitled to inherit the same. This Bill in this respect, does the same thing for Muslim women as my Honourable friends, Messrs. Deshmukh, Hosmani, and Gupta's Bills want to do for Hindu women.

I may mention here that on account of the introduction of provincial autonomy today the succession to agricultural land has gone out of the purview of the Bill. I am really sorry that by the exclusion of agricultural land from the scope of the Bill its real object has been frustrated. This would not have happened if the Government had not adopted an obstructive attitude towards it during the last Simla Session when the ballot favoured it but some Honourable Members tried to create obstacles in the way of the Bill by moving unnecessary amendments to Dr. Khare's Bill. The blame for delay in the enactment of the Bill and the exclusion of succession to agricultural land thus lies at the door of those Honourable Members and not on my shoulders.

The House will remember that during the last Delhi Session the Bill was circulated for opinions to Local Governments. Before I give an analysis of the opinions I wish to point out that no Local Government has tried to obtain and forward the opinion of any religious body like the Jamiatul-Ulema-Hind or of any women's organisations for whose benefit it is meant. Anyhow the examination of the opinions received discloses that the Local Governments are divided on the merits of the Bill. Some are in favour, some would leave the fate of the Bill to be decided by the Muslims themselves, while others would like the Bill to be enacted by the Local Legislatures. While non-Muslim officials of the Government have either adopted a neutral attitude or are opposed to it, the Muslim opinion throughout India, including the Punjab, is strongly in favour of it. Most of the criticism against the Bill concerns the provision relating to the Law of Succession, which under the Customary Laws, is favourable to men and highly detrimental to the interests of women. The Law of Succession is contained in the Holy Quran itself and no Muslim worth the name can and should question its authority. As this law is Allah made and not man made, the Muslims should willingly accept it. By the exclusion of succession to agricultural land the chief objection against the Bill that it will lead to excessive fragmentation of holdings disappears. Nor, will it now affect the Punjab Land Alienation Act. As the persons affected by the Bill, namely, the Muslims, strongly support the Bill, there is a good case for the Bill being referred to a Select Committee. Minor details can be discussed in the Select Committee which can suitably amend its provisions, if necessary. Now that the Bill will not affect succession to agricultural land, I am sure that the Government will have no objection to the Bill. I hope that they will support the motion before the House and provide facilities for its early enactment. By so doing they will earn the gratitude of the Muslim community in general and of the Muslim women in particular. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill to make provision for the application of the Moslem Personal Law (*Shariat*) to Moslems in British India be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, the Honourable Sir Muhammad Zafrullah Khan, Maulvi Syed Murtuza Sahib Bahadur, Maulana Shaikat Ali, Qazi Muhammad Ahmad Kazmi, Dr. Ziauddin Ahmad, Sir Muhammad Yamin Khan, Syed Ghulam Bhik Nairang, Khan Bahadur Sheikh Fazl-i-Haq Piracha, Nawab Sahibzada Sir Sayad Mehr Shah, Maulvi Badrul Hasan, Khan Sahib Nawab Siddique Ali Khan, Mr. M. Asaf Ali, Dr. G. V. Deshmukh, Sir Muhammad Yakub, Mr. Muhammad Azhar Ali and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): [In rising to support the motion, I do not propose to make a long speech. It is a matter of pleasure to me that this Bill has reached a stage when it is going to be referred to a Select Committee. A measure like this has been anxiously waited for by the Muslims in the whole of this country. When the administration of India was taken over by the late Queen Victoria in 1858, the Mussalmans were given an undertaking by a solemn proclamation that in matters relating to marriages, succession, divorce and others they will be governed by their own personal law, namely, the Muslim law known as *Shariat*. Subsequently, on account of certain political or other exigencies and reasons, Government receded from that solemn proclamation and in certain parts of the country, instead of the law of Islam, certain families and certain communities, among the Mussalmans, were governed by a law which is not the Muslim law. Probably, it was on account of the fact that in certain families, which were new converts to Islam, there was a desire that they should continue to be governed by their own law which they followed before they became Muslims. For that reason and for some other reasons, certain families were not governed by Muslim law; but during the last 20 or 25 years, there has been an awakening among the Mussalmans and they have realised that the best law which can govern their family relations is their own Islamic law. Therefore, Muslims from all parts of the country wanted that such a Bill should be brought on the statute book. Now, as the Mover of the Bill has already given the full history, I need not repeat it here again. The chief objection on the part of the Government had been relating to landed property and agricultural lands, and now it has been pointed out that from today any legislation relating to agricultural land goes outside the purview of this Assembly, and the Select Committee will make necessary amendments. What I want at this stage is only that the House should accept the principle that, according to the proclamation of Queen Victoria, the Moslems are entitled to be governed by their own law, and when this Bill will come before the Select Committee, all the objections which have been raised by the different Local Governments will be fully considered, and the Bill will be amended in such a form as would satisfy all parties. As the Government have recently shown generosity towards the Hindu community and have allowed two of their social measures to be passed—in fact they have been so generous as to allot their time during Government days—I hope they will show the same generosity and courtesy to the Muslims and will not stand in the way of their referring this Bill to the Select Committee.]

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): According to the Muhammadan law, a man and a woman are both entitled to be governed by that law. What we find that in some provinces, as in the Punjab, the law is not giving the benefit of the Islamic law to the women, and it is that genuine desire of women who profess Islam as their religion that the Islamic law should be applicable to them. In the Punjab, there is a customary law. Certain families have started a sort of custom in their family from generation to generation, and they are governed even up to now by their own customary law. That law may be good in its own way, but the point pressed by the Muslim women of the Punjab is that being Muslims, why should they not get the benefit of the Islamic law and why should they be deprived of their genuine right of inheritance or

account of the customary law which gives to the man a much bigger share than what he is entitled to receive under the Islamic law. It was 1,300 years ago that the Founder of Islam recognised the specific right of women in property and put the women on the same footing as men as far as inheritance is concerned. In Islam, a woman is fully entitled to a share. She becomes the full owner of the property. She incurs all the liabilities. She does not enjoy only the limited right of maintenance but she becomes the full owner of the property. Even the married woman can possess property of her own. She is under no obligation to give her property to her husband. She may not even have it managed by her husband. She enjoys all the rights that a man enjoys. Now, advanced women in the Punjab have come to agitate for their rights and ask why should they be deprived of their rights under the Islamic law? I hope that this Legislature will not come in her way simply because a particular custom prevailed, which custom was made by men and not by women and which deprived the woman of her legitimate right. A brother comes in and wants to inherit the whole of the property and deprive the sister. A sister cannot be deprived of according to the Islamic law, and neither can a wife be deprived of property. According to Muhammadan law, a wife is entitled to one-fourth of the husband's entire property if there are no issues and to one-eighth of the property if there are issues. This property she inherits by law and she does not want to be deprived of that simply on account of a custom which had originated sometime in the past on account of some persons trying to possess property to which they were not entitled originally. Muslim law had been the pioneer of advance in law in the world, and was later followed by many parliaments in the world. Even up to 1870, in England, a married woman had no right to possess property separately; but Parliament found that the principles laid down by Islamic law were genuine, and women came forward to claim the same thing which was given by the Islamic law. We find even today amongst our Hindu brethren the same kind of feeling existing, but, Sir, it is really a shame that a woman who has already got the legal right to get a share of property is prohibited from that by a certain custom, and, therefore, no person who can really see the steady advance of human society and who wants that human society must live on terms of equality among its component parts and must live on the right principles of equity should accept those principles which go against the very root of the principle which gave the weaker sex a genuine and specific right. The Bill, as drafted, certainly is defective, and there are some cases where something will have to be taken into consideration,—like the *Taluqdari* system, the United Provinces Landholders' Act, etc., which are not really meant for the general public to be followed, but they are only limited to certain classes just like what we have got for people like the ruling princes. You cannot call upon a ruling Prince that because he is the ruler of a country, therefore his daughters must have equal shares with the son who comes to rule. In the same manner the *taluqdari* system was made separate from the general Muhammadan personal law and with the same object which gave to a certain class of Zamindars in the United Provinces the United Provinces Landholders' Act, which was enacted to give protection under specific circumstances: those Acts are meant not to deprive the women; they deprive even men, so that the younger sons of a *taluqdar* do not inherit as opposed to the eldest son. Therefore, there is no distinction made between men and women under those Acts where the

[Sir Muhammad Yamin Khan.]

younger son is prohibited and daughters also are prohibited. But here in the Punjab, under certain customary laws, it is the woman who has been deprived, and a distinction is made between younger sons and younger daughters. Therefore, this distinction should be removed by this Legislature, specially when the people whom it affects desire that the change must come. It would have been different if the Muhammadan women were not wanting to have any change. But when we find that the Muhammadan women are wanting that the change must come because a certain custom is depriving them of their rights, this Legislature must rise to the occasion and must give protection with regard to people who have got no voice in this House but whose claim is genuine and is based not on any selfish motive but on the real law and on a right which has been given to them by the religion which they profess. I think the Select Committee will make all the amendments necessary and remove all the defects which are in the present Bill, which is not very happily drafted, and many exceptions will have to come in. All that will be the business of the Select Committee to do; but the principle that all Muhammadan women can enjoy a right which is given to them by their law should be accepted by this House. With these words, Sir, I support the motion.

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): Sir, I beg to support the motion moved by the Honourable the sponsor of this Bill for reference of the Bill to a Select Committee. I may also
1 P.M. say, like some other speakers who have addressed this House in this connection, that I do not propose to make any long or detailed speech, but I must point out certain facts which entitle this Bill to a very serious consideration at the hands of this Honourable House. In the first place, I think it will be recalled that this Bill has not come before this House for the first time. On a previous occasion, I remember, Mian Abdul Haye, an ex-Member of this Honourable House, introduced a Bill, not only to this effect, but, if I mistake not, almost precisely worded like the Bill before this House now. That Bill ran its course but was not lucky enough to secure a passage through this House, the Assembly was dissolved, and the Bill lapsed. Then another Assembly succeeded that Assembly. But during the long term of that Assembly, none of the Members took any notice of the Bill, which had lapsed merely on account of the dissolution of the former Assembly.

When the present Assembly started to function, my Honourable friend, Hafiz Muhammad Abdulla, did the right thing and introduced this Bill again. It has ever since been pending in this House and has had a very precarious sort of career so far, having taken a long time over circulation for the obtaining of opinion and having been very often postponed on account of the preceding items on the agenda not having been finished and therefore this item not having been reached. Anyhow, it has now come before this House, with the motion that it may be referred to a Select Committee, and I submit that when the nature of the Bill, the necessity for legislation of this kind, and the vast volume of public sentiment which is backing this Bill are considered, there should be no hesitation on the part of this House to accept the motion for its reference to a Select Committee without much ado. Not only, Sir, has this Bill come before this House for the second time but really a measure of this kind

has been long long overdue. As my Honourable friend, Sir Muhammad Yakub, has said, the Muslim community has really been feeling all along, and the feeling has been given vent to on many occasions, that their personal law and their social institutions have suffered an irreparable injury owing partly to lack of appreciation by the authorities of the true position of the Mussalmans with respect to their personal law and partly to the apathy of those who represented them before the authorities. Government may be to blame for its ignorance or lack of appreciation but in all fairness I must say that those who acted as the exponents of the views of the Muslim community and as leaders of their thought and their social organisation are, in fact, more to blame for not having risen to the occasion and not having correctly expounded to the authorities what the Muslim community really wanted and never pointed out the intensity and the depth of the feeling which the Muslim community has on account of being told at every turn that their personal law is not to be given effect to.

I have spent about 38 years at the bar and have been practising as a lawyer. In at least hundreds of cases in which I appeared, the question whether the personal law of the Mussalmans or some sort of custom is to be followed has been under consideration. I do not claim to be so sanctimonious as to have all along represented the side which stood for the Muslim law. On many occasions I had the misfortune in my professional capacity of upholding what goes by the name of custom as against Islamic law. But the experience that I have gained is certainly the experience of hundreds of others like myself placed in a similar position, and that experience is this that what goes by the name of customary law is really a bundle of mischievous uncertainties. Any fellow can say in a court of law, when faced with a claim, a perfectly valid claim based on the glorious principle of Islamic law, that his family or his community or his caste does not follow the Islamic law but it follows a custom which he proceeds to specify. The fact of the matter is that on many occasions he invents what he alleges to be the custom and then in due course of legal procedure issues are struck and evidence is recorded and this man who had invented the so-called custom forges evidence, fabricates documents, puts in any amount of perjured evidence, and succeeds in proving the alleged custom, and the courts are compelled by the legal procedure to hold it to be a custom, valid in all essential requisites of a custom, ancient and invariable and certain and all that, as the jurists say. But the man who has proved that custom and those who are in the know and the public are fully cognizant all along that the defence was false, but there is the legal sanctity attaching to a judicial decision. He may win in the first court, he may win in the appellate court and he may win in the High Court and that will create a precedent which will be followed in dozens and scores of other cases so that injustice and iniquity committed by him in one case will be perpetuated, and this will have the dignity of a real custom. This unfortunately is what happens in a majority of cases and it is freely admitted by authorities on law that custom, at least in the Punjab, is mostly judge-made law, the meaning of which is simply this that after holding an inquiry into the existence of an alleged custom, the courts have, on the evidence before them, come to the finding that such and such custom exists. In that sense it is a judge-made law, and not that the judges intentionally invented that law out of their own brains. That is not the meaning. By judge-made law is meant the law

[Syed Ghulam Bhik Nairang.]

which, after a judicial inquiry, the judges have found to prevail. That is what custom is. But, Sir, as I have said before, the community has all along been conscious that iniquity is being perpetrated in the name of law. The Courts are being misguided and misled into doing injustice, when they all along intend to do justice, and it is time that this injustice should be prevented. We know that in the case of certain points of customary law the Legislature had to cure certain defects which they found would lead to endless litigation. For instance, there is a well-known doctrine applying to the alienation of ancestral land, under the customary law in the Punjab, and it used to be like this formerly. Any descendant of a common ancestor from whom property had descended, however remotely related he may be to the alienor, could challenge the alienation. At one time there was, practically, even no law of limitation applicable to such a case, and certainly up to a certain point in the history of the customary law in the Punjab there was no limitation as to the degree of relationship. Any man who, according to the pedigree set up by him, was related to the alienor perhaps, say, in the fourteenth degree, was free to come into court, file a plaint, and challenge his alienation. When the defence was raised that he was too remotely related to the alienor to be able to contest the alienation, he used to reply that by the custom of his particular community even a remote relation like him could claim to set aside the alienation. Litigation went on, whatever was the result. There being no fixed degree beyond which a man, even though a collateral of the alienor, could not claim to set aside his alienation, any number of suits, absolutely untenable suits, suits ending in failure, used to be instituted. The Legislature saw the absurdity of the position and at last passed an Act by which it restricted the right of suit in such a case to the descendants of the great great grandfather of the alienor. That put a limit to it and shut out a very large number of absolutely untenable cases which were simply speculative in which adventurous people used to indulge. That had a very wholesome effect. Similarly, as I have said, at one time there used to be no period of limitation. Practically, even in case of an alienation which was fifty years old, if the alienor happened to be a long lived person and died, say, only ten years ago, although he made the alienation 50 years ago his heir would come into the court. This used to be the case at one time. His heir would come into the court and put in a suit for possession of property without even mentioning the alienation which had been made. The defendant came into the court and said, well, this property was conveyed to me 50 years ago by such and such a deed. Here is the deed. Then the plea used to be set up that the alienation even if made must have been without necessity and without consideration, and that at any rate it was not with the consent of the next reversioner and is not binding on the plaintiff. Thus litigation went on. Actually very very old alienations were set aside and people on pleas of this sort actually succeeded. After hundreds of cases, nay thousands of cases, had been fought on that hypothesis, the Legislature came in again and cured the absurdity by passing a Limitation Act under which a period of 12 years was prescribed as the time within which such a suit must be brought, certain starting points of limitation being fixed. So that uncertainty which had been a source of so much expensive and ruinous litigation was put an end to and moderation of course was brought about by fixing a period of limitation.

I have mentioned these matters merely by way of example and I say that if a law like section 5 of Act IV of 1872, the Punjab Laws Act, which is the foundation of all customary law in the Punjab and which lays down that in such and such matters, if there is custom applicable to the parties, that custom shall be the first rule of decision otherwise their personal law will apply is left intact, there is a standing temptation to invent custom, to fabricate evidence to prove custom, to mislead the courts, and make them commit injustice which as I have already pointed out will last for ever. Whatever may happen in the case of others, in the case of Muslims, I submit that this state of things is, to every right minded Muslim, absolutely intolerable. We, Muslims, are commanded by the glorious injunctions of the Holy Koran to follow the law laid down in the Holy Koran and in the authentic sayings of the Holy Prophet.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can continue his speech after Lunch.

The Assembly then adjourned for Lunch tili Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Sir Leslie Hudson, one of the Panel of Chairmen, in the Chair.

Syed Ghulam Bhik Nairang: Sir, the position of the Muslim community with regard to their personal law is such that they are in all conscience bound to follow it without hesitation, and therefore the existence of a legal state of things which allow not only evasions but defiance of that law is a matter which is deeply resented by the community. And, therefore, on many occasions statutory legislation making it obligatory for the courts to decide matters relating to succession and other things mentioned in this Bill according to Muslim law was demanded by the Muslim community. This Bill is the expression of that desire which has been expressed on so many occasions and in so many forms. Now if you examine the contents of this Bill you will find that it refers to a good many matters, but the great thing which is a source of constant complaint is the suppression of the rights of female heirs; as for instance, the daughter, the widow, the sister in certain circumstances, and certain other female heirs. As has been pointed out by one of the Honourable speakers who preceded me, Islamic law was really the first system of law which accorded to woman the status not only of an heir but of an owner of property in the real sense. In the different capacities of daughter and widow and so forth, she was given a fixed share. The share which devolved on her was to be her absolute property, qualified ownership being entirely unknown to Muslim law. There is no such thing as life interest or limited interest or anything of that sort except in certain wakf schemes in which of course the founder of the endowment is allowed discretion to lay down any conditions consistent with Islamic law which he likes to lay down. Among such conditions it is possible to have certain life interests; otherwise all ownership of woman as of the male is real and absolute. Whenever she succeeded to property or acquired property, she was the real and true owner of property. This was a great advance on all pre-existing systems of law and this was an example which ought to have been followed by other systems

[Syed Ghulam Bhik Nairang.]

of law, and in some cases has been actually followed by other systems of law. But the grim irony of our situation in India is that in consequence of the recognition of custom by statutory provisions we have been deprived of that great right which woman possessed in Islam. We find now in provinces where custom is recognised to have the force of law, for instance, in the Punjab and Oudh and certain other parts of India, that it is the female heirs who suffer most. And it has never occurred to those who are responsible for the administration of justice to think of the great injustice that is involved in this state of things. After all, how is it that the females came to be deprived of the rights which they undoubtedly possessed under their personal law? How is it that customs which are hostile to the rights of females to succession came to be recognised? Evidently upon statements of the males interested in their deprivation, and in certain rulings of the High Courts this aspect of the matter has been significantly commented upon, and the situation has been compared to the well known story where a man was painted by a human painter as bearing down a lion. A lion was shown that picture by a man saying, "See how strong this man is; he has borne down a lion". And the lion retorted by saying, "If the picture had been painted by a lion, the man would have been underneath and the lion over his chest". This is exactly the position of the females under the alleged customary law. Male heirs and male expectant heirs in various ways led the authorities to believe that such and such was the custom in their family. Their *ipse dixit* was accepted; the females were never asked anything and they never knew anything about the *ex-parte* records of customs which were being prepared against them, and they discovered, if at all, only too late that certain courts in all solemnity had ruled them out of court and deprived them of their rights of inheritance.

One of the main objects of the present Bill is to secure to the females their due right to inheritance and ownership under Muslim law. We want to have the rules of inheritance under Muslim law enforced and their legal shares given to daughters and widows. We want also to see that female heirs who do succeed to property are no longer hampered by any notions of life interest and limited power and lack of the power of alienation and this and that. We want to have the true principles of Muslim law applied to all Muslim female heirs. It was pointed out by the Honourable the Mover and it was remarked only a minute ago by my Honourable friend, Sir Muhammad Yakub, that the question of succession to agricultural land being now a matter to be dealt with by the autonomous Legislatures of the provinces, this Assembly is no longer concerned with that aspect of the matter and a discussion of the rights of females may very well be avoided. But I must point out that the example of the agricultural communities, which in the Punjab and other provinces have been strenuously trying to maintain all along that they are governed by custom and not by their personal law, has been so catching that in cities and towns, among communities who have nothing to do with agriculture or with the ownership or possession of agricultural land and have as a matter of fact nothing in common with those communities who profess to follow custom, even among those communities it has become the habit to set up in case after case the plea of custom, thereby in certain cases actually succeeding in depriving the rightful heirs of their rights of inheritance and in certain other cases at least in indulging in ruinous litigation up to the very last court. Surely, even that is a most important matter and therefore this aspect of the matter has to be considered seriously and

the rights of female heirs have to be stressed in this connection. Bearing all these points in mind, I do hope that this House will agree to the motion to refer this Bill to the select committee proposed by the Honourable the Mover, so that the wording of the Bill and any possible suggestions that may have been made by various authorities on the Bill being circulated for eliciting opinion thereon may all be considered and the Bill may then come back to the House for consideration in a duly amended and considered form. With these words I support the motion of my Honourable friend.

Khan Bahadur Shakh Fazl-i-Haq Piracha (North-West Punjab: Muhammadan): Sir, I wholeheartedly support the motion moved by my Honourable friend, the Mover of the Bill. I am one of those who conscientiously believe that most of the present degradation of the Indian Muslims in social and spiritual sphere is due to their progressive abandonment of the social code of Islam. Their defection from the salutary rules of conduct in matters of every day life has caused in them weaknesses, selfishness, and inward hostility to the just claims of its different members, other numerous vices which have all contributed to weaken their resistance to the surrounding influences of the communities and races among which they found themselves on their migration from the land of their religion. This process dates from a pretty long time, but has accelerated since the advent of the British as the rulers of the land. In times when Muhammadans had their own rulers, care was taken that Muhammadans were governed by their personal law, through the Qazis; but when the British Government came in, they began to import into the personal law of the communities their own notions of right and wrong. The result is that the Muhammadans find themselves governed by an Anglo-Indian law, which possesses no kinship with the Muhammadan law, but is a hybrid product of English law and Hindu usage.

Muhammadans acquiesced in it, with the result that they are aghast to find themselves wedded to practices which are wholly foreign in spirit and letter to the law as laid down in the Holy Qoran. An habitual addiction to evil has blinded a section of my community to perceive the enormity of the wrong they are doing to themselves and to their community by according usage, which is contrary to the Islamic law, a status and dignity of personal law. That is a blasphemy. I know that the process of observing custom in preference to the Qoranic law has gone far enough, but not to a length that it has become impossible to reclaim them from their mistake. My belief that it is not too late to bring them round is based on the general desire of the country for coming back to the personal law and of their consciousness that custom has disintegrated them into different groups. Sir, it is on that account that I wholeheartedly support the Bill. It offers my community an opportunity of lining up those sections that are wandering in the jungle of different customs, to come back on the true and straight road of the religious law of Allah, and thus to walk together with the rest of Muhammadans of India, and earn the satisfaction of living up to the Koranic injunctions. But my zeal for my religion and my exultation at the fact that the Bill is an attempt at purification of my religion from corrupt customs that have insidiously entered into it, is not the only reason to prompt me to support the Bill, but I support it also because the Bill offers the Muhammadans an opportunity of basing their conduct in social, religious and spiritual spheres on basis of equality and humanity. I claim that the Islamic law is a complete-

[Khan Bahadur Sheikh Fazl-i-Haq Piracha.]

and competent law to lead and guide man in all aspects in life. Its principles are immutable in this mutable world and offer man illuminating and enduring guidance from falling into the quagmire of petty and selfish interests. Sir, I want to preface my discussion of some of the important and controversial provisions of the Bill with the remark that it is a very important piece of legislation, inasmuch as it embraces all the aspects of the social life of Muhammadans. As many as 17 different subjects of Muhammadan law have been included in this Bill, and I congratulate the Mover for introducing a Bill which is both precise and comprehensive, and is an embodiment of the wishes of the best section of the thinking Muhammadans.

On an examination of the various opinions supplied to us in 3 papers, I find that the only provision of the Bill which has aroused controversy is the one relating to succession. I would, therefore, Sir, devote my speech mainly to the discussion of this provision. I feel I am safe to conclude from my examination of the opinions that there is an explicit acceptance of the other provisions of the Bill, excepting the one relating to succession. I also find that the largest amount of opposition to this provision has come from my province. But knowing as I do my province and its people, I can claim that this does not represent the views of the Muslims. Every one from the Punjab whose opinions I have read has in his personal capacity welcomed the Bill and has not pleaded on his own behalf any difficulty that may crop up in its administration, but has on the other hand talked of difficulties with regard to others whose opinion does not find any place in the list of the opinions before us. All the religious heads and religious associations, which know the people and the difficulties which may arise in the working of the Bill when passed into law have blessed the Bill and have shown no uneasiness on its being placed on the Statute-book. I regret to find a conspicuous absence in the list of the opinions received, namely, of women, who are to be vitally affected by the Bill. It was necessary that they should have been consulted. I do not attribute the absence of their opinions to their indifference or neglect. The ladies whenever they got an opportunity have made emphatic demands of their lawful right to inheritance. I claim to know intimately the rural classes of the Punjab, and can confidently assert that all of them are God-fearing and religiously devoted, and they prefer to be governed by the Islamic than a man made law, which the customary law evidently is.

Sir, for every Mussalman birth of children is ordained by the Almighty and an unfair distinction of treatment, from the one laid down in the Quran, is an indefensible defiance of his Commandments. Man has no right to penalise a particular child on grounds of sex. All persons are equal, irrespective of their sex. If that is so, and I believe it is so, is it not a defiance of the Commands of God,—I seriously ask,—to differentiate in one's treatment between a daughter and a son, or between a sister and a brother? Islamic law guarantees to every member, irrespective of sex, rights in a definite proportion to the property of the deceased, and it is what the Bill seeks to restore. I am deadly against any departure from that law. I advocate conformity to the law, because it is laid down by Allah, and is therefore binding on the followers of Islam. I consider it is based on the principles of equity and therefore should have the best claim on us. And it is because it offers us the best practical solution of the difficulties that are confronting us in our social sphere and are threatening to invade our domestic peace in the near future. Educated woman is coming into her

own; the growing majority of Muhammadan educated men are supporting directly or indirectly her claims to a more humane and rational treatment, and one can predict without any fear of contradiction, that in the course of a few years her example will spread, her resentment which is at present finding expression in courteous and reasonable appeal to men to redress her wrongs, would flare up and end in indignant agitation and among other things, embitter our domestic life. Based as is the agitation on moral and honest grounds, I am sure she will before long get her lawful rights and secure her legitimate position in the society. A gift, without grace, of what is her lawful right would never evoke appreciation or gratitude and would not help in the establishment of a harmonious family atmosphere. Wisdom lies in avoiding that rancour and frittering away of energies of one-half or the better half section of the community from being spent in a domestic war. Muhammadans cannot afford the wastage of these valuable energies that can be usefully spent in the uplift of our domestic and social life. And, Sir, may I point out who are those to whom we are giving these rights? They are the flesh of our flesh, bone of our bone and blood of our blood, whose only fault is, that they were not born to us as sons and brothers.

Sir, I am confident of the support of the Government in this measure. My confidence rests upon their past interest and sympathy in the rights and welfare of the women of this land. That interest finds expression in the policy of the Government which is to accord women an individual status in the political and social sphere of life. She is a voter, a legislator, and an administrator and is a distinguished member of respectable professions.

There is another philosophy of human dealings known in political science as socialism, which is hanging as a menacing danger on us in India. It seeks to establish in practice equality of rights to every man, irrespective of sex and status. I am not here to define it or to defend it. But this much I know, that its realisation lies through a path of bloodshed, suffering and fighting, as the first enemy it has to fight against, is capitalism. I have no love for either, and, therefore, accord a sincere welcome to the Bill, as it provides a practical half way house between capitalism and communism.

Although I understand that succession to agricultural lands is from today a provincial subject, I would take this opportunity of making my observations to some of the objections raised in connection with the agricultural lands inherited under the proposed measure, if it is passed into law. As far as I am aware, two arguments have been advanced against the provision relating to succession on behalf of the agriculturists of the Punjab, namely, that its acceptance would accelerate the fragmentation of land and would neutralise the objective of the Punjab Land Alienation Act. Any one looking dispassionately at the agrarian problem of the Punjab would find out that by closing the right of females to inheritance to agricultural lands, the problem remains unsolved as ever. The remedy lies in industrialising the country and teaching the agriculturists industries subsidiary to agriculture. The Government should leave its time honoured practice of indulging in palliatives. It should address itself to the root of the problem and bring about conditions in the life of the agriculturists that would prevent them from falling a prey to the increasing temptation of an agrarian revolt. Multiply the avenues of decent earning for the agriculturist instead of telling him or pleading on his behalf that an addition of a female claimant to the land of his male relative will hasten his ruin. I could appreciate

[Khan Bahadur Sheikh Fazl-i-Haq Piracha.]

the argument of fragmentation of holdings if it was sought to support the principle of primogeniture in matters of inheritance or if there would have existed the practice of this principle. When such a principle does not exist and as many sons as there are of a father can divide among themselves his property, I cannot see how the addition of a daughter as a sharer of her father's land does lead directly and exclusively to the fragmentation of holdings. The net effect of the change contemplated in the Bill will be that a fragmentation that would have occurred and forced the sharers to resort to other vocations in life would come a little earlier than otherwise. This, I consider, is a silver lining to the dark clouds of the worries of the agriculturists. I feel that there exists a wide agreement on the point that land cannot support an ever increasing population and the time has come when the agriculturist should look forward to other vocations in life. I feel that the provision of the Bill which is assailed on the ground that it would hasten the process of fragmentation of land would to an extent provide that stimulus. There is already the process of fragmentation of land actively at work. The prevention of females from sharing the land in inheritance is not the remedy to stop the growth of fragmentation. The remedy as the Government have realised lies in the consolidation of holdings through exchange.

There is another argument that a foreigner would come in the family to share the ancestral property. That argument is not supported by practice, as generally marriages in the agriculturist class take place in the family itself and for the sake of keeping the property in the family, men would try to enter into matrimonial alliances in the same family.

Another argument advanced against this provision is that it will neutralise the object of the Land Alienation Act. Sir, I would have dilated on this point, but I am told by my friends that as the succession to agricultural lands is a provincial subject, and it would be beyond the scope of this Bill, I do not propose to speak over this matter any more.

Sir, in spite of my knowledge of the fact that the other provisions of the Bill command acceptance, I would take the liberty of laying emphasis upon the provisions of the Bill relating to divorce and wakf. Sir, the present Anglo-Muhammadan law as practised in the British courts in matters of divorce, etc., has given rise to the dangerous and unhealthy practice of resorting to apostasy by women. In the original Muhammadan law the wife has a restricted right of divorce known as *Khulla*, but in the Anglo-Muhammadan law as administered in our courts, this right is not recognised. The result is that the courts do not assist her in escaping from the tyranny of her husband who can leave, remarry and practise other cruelties except by renouncing her faith temporarily and not out of sincere conviction, as the only means of escape. Instances of this feigned apostasy are numerous and to check its growth some members of this House have given notice of introducing a Bill to deal with this evil. With the passage of the Bill under discussion, the cruelly treated wife will be able to get the desired divorce on reasonable grounds and without abjuring her faith. If this Bill is passed into law, it will be necessary in this connection that, in matters of divorce and dissolution of marriage, the proper authority to order such judgments under the Islamic law must be a Muslim. Therefore, in case the proposed Bill is passed into law, the Government shall have to keep in mind to provide for such Courts of Muslims as are necessary

in certain matters according to the Shariat law, for which I think no extra expenditure at all would be needed. I desire to speak for a few minutes more, in connection with the Wakf, but as I have already taken a good deal of time of the House, and some of my friends are anxious to move their Bills. So I close my speech and support the Bill wholeheartedly.

Maulana Shaikat Ali (Cities of the United Provinces: Muhammadan Urban): Sir, I would have given a silent vote on this Bill, but as it is a very important matter, I would like to take a minute of the time of the House. The Honourable the Mover of this Bill, Hafiz Muhammad Abdullah has done not only a good and pious act, but has also done a great service to Islam and removed a black stigma from the face of the Muslims of the Punjab. In the face of the Koranic law, the customary law a very bad and irrational law was brought in and the daughters and sisters were deprived of their shares in the property and given to the sons and brothers only. We are all grateful to the Honourable gentleman for bringing forward this Bill, and I support the motion.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): My province of Oudh is the province which will be greatly affected if this Bill is passed into law. I give my whole-hearted support to the Bill, but I would request that, when the Bill comes before the Select Committee, provision may be made in the Bill so that it will not operate to the detriment of the people there. There is a law of pre-emption which is specific for the province of Oudh and also the law of dower is specific for my province. I do not want to dilate on these points today, but I will take them in the Select Committee. I sincerely hope that the Select Committee will give due regard to the points that I may raise in the Committee. With these few remarks, I support the motion.

Maulvi Syed Murtaza Sahib Bahadur (South Madras: Muhammadan): So far as the present motion is concerned, no long speeches are necessary. Of course, Islamic law is the boon of the community, whereas customary law has proved a bane to the Islamic society. So it is that this Bill has been tabled by my Honourable friend, Abdullah, Sahib, who has done a great service to Islam. Under Muslim rule Islamic Law was being administered by Kazis, Muftis, and Kaziul Kazzats. Even during the earlier days of the English rule there was Islamic law in promulgation for some years, but, later on, that was substituted by customary law, which, as I have already said, has proved itself a bane. I am very glad to learn that even the Government will not oppose this, and so no long speeches are necessary. So far as my province is concerned, I may pride myself on the fact that Islamic law is being administered there at least in some matters.

Sir Abdul Halim Ghuznavi (Dacca *cum* Mymensingh: Muhammadan Rural): Also in Bengal.

Maulvi Syed Murtaza Sahib Bahadur: I am very glad to hear it. It is Islam, as has been remarked by previous speakers, that has raised the status of women to a great extent, and such a thing has been denied to our sisters and mothers of the Punjab. This Bill is calculated to improve matters to a great extent, and, therefore, I support the motion.

The Honourable Sir Henry Craik (Home Member): I would like, in the first place, to reply to a certain observation made by the Honourable the Mover, to the effect that Government had taken up a dilatory attitude with regard to this Bill. That, Sir, is not correct. On the previous occasion, that is to say, in April last year, the Honourable Member moved to take the Bill into consideration, and I moved that the Bill be circulated. He immediately accepted that motion and the House agreed to it. There was nothing dilatory about that, and the fact that the Bill has not previously come up for discussion is not due to any action on the part of Government but to the fact that the Bill in front of it took such a very long time. As far as I remember, no Government Member even spoke on that Bill and a good many Honourable Members who have supported the present Bill did take an active part in the discussion of the Arya Marriage Bill, no doubt, for a perfectly good reason.

When my Honourable friend moved in April last year that this Bill be taken into consideration I did sound a note of caution, because I said that in regard to certain matters and with reference to certain parts of the country, this Bill made what can only be described as a very revolutionary change. I am not saying that it is not a good change. I am not saying that it is not in the interests of equity, good conscience and the greater happiness of the greater number. But it will be admitted that in regard to a certain type of property, that is agricultural land, and in regard to certain parts of the country, the Punjab, Baluchistan, Sind, I think part of Madras, and possibly parts of other provinces, it did purport to make a very drastic change on a matter that must affect closely the daily lives of a great many million Muslim land-owners. I do feel that in regard to that particular provision it would be premature to say that public opinion is solid behind that particular change. I believe conscientiously that in the case of the Punjab, for instance, not one in a thousand of the people whose lives will be affected by this change in the matter of succession to agricultural land is even aware that the change is under discussion, and I shall certainly be very surprised if a genuine plebiscite could be taken, if the great majority of the land-owners in that part of the country were in favour of it. However that may be, it has been pointed out to me recently by the Honourable the Mover and his friends that in so far as the Bill purports to change the methods of succession to agricultural land it cannot have effect. Under the Government of India Act of 1935 which comes into force today, legislation on the subject of the transfer, alienation and devolution of agricultural land, is a subject for the Provincial Legislature and the Central Legislature has no competence in regard to that matter. If Honourable Members will look at entry No. 21 in the Second List of Schedule VII of the Act, they will see what I mean, and if they will look at entry 7 in List 3, that is the concurrent legislative list, they will find that concurrent legislative powers are given both to the Central and Provincial Legislatures in regard to the following subjects—"Wills, intestacy, and succession, save as regards agricultural land". In other words, the right to legislate in regard to the succession to agricultural land is a right wholly for the Provincial Legislature, and in so far as this Bill seeks to change the rule of succession to agricultural land, it will of necessity be inoperative and to that extent it must be amended by the Select Committee. Now, Sir, that being the case, the main ground on which I ventured on the last occasion to strike a note of caution has disappeared.

I believe that the change that the Bill will seek to introduce is not merely so revolutionary or so drastic as I had at first imagined. I take it that speaking very broadly and no doubt subject to certain exceptions the general position in the Punjab, in Sind and probably Baluchistan is that Muslims who are agriculturists are at present bound by custom in regard to questions of succession and so on.

Syed Ghulam Bhik Nairang: Not all.

The Honourable Sir Henry Craik: Broadly speaking, that is the general rule. On the other hand, I think I would be fairly correct in saying that Muslims who are not agriculturists, those who live in towns, are broadly speaking already bound in regard to these matters by the Muslim Shariat law and so far as they are concerned, this Bill will not make any great change.

Syed Ghulam Bhik Nairang: Even they are constantly tempted to evade the provisions of the personal law by the contagion of these agriculturists.

The Honourable Sir Henry Craik: Possibly, but broadly speaking and subject to certain exceptions what I have said is correct. If the House accepts that view and if it accepts, as it must accept, what I have just stated as regards the effect of the new Act, that it cannot make any change in regard to the succession to agricultural land, then as I said the main reason why I was inclined to be cautious about this Bill disappears. That is also the main reason why the various people consulted, both Local Governments, officials and non-officials also, have in a good many cases taken objection to this Bill and that, I may say, is also, as will be within the recollection of my Honourable friends from the Punjab, the main reason why a similar Bill introduced in the Punjab Legislative Council was not proceeded with. It was perfectly apparent that it was not going to get the support of the great bulk of the Muslim agriculturists. In these circumstances, Government will support the motion to Select Committee, but I would like to express a hope that the examination in the Select Committee of the Bill will be as thorough and adequate as it possibly can be, and I would also suggest that if, as I think likely, the Bill emerges from the Select Committee considerably changed from its present form, then it would be wise in the interests of the Muslim community themselves if the House would agree to a further circulation. It is no good in these matters trying to legislate in advance of public opinion. I think it always pays in these social matters to make sure, before a measure of this kind is passed into law which will affect the daily lives of many millions of Muslims, that it has the great mass of public opinion behind it. Also, let me remind the Muslim Members of a measure passed so long ago as 1920, Act No. XLVI of 1920. The principle embodied in this Act is quite a simple one, but I do think it deserves very careful consideration. It refers to the Cutchi Memons, who I understand are a Moslem community in the Bombay Presidency, and its object is thus stated in the Preamble:

"Whereas it is expedient to enable those Cutchi Memons who so desire to be governed in matters of succession and inheritance by the Muhammadan law; It is hereby enacted as follows—"

[Sir Henry Craik.]

and the operative section is this:

"Any Cutchi Memon who has attained the age of majority and is resident in British India, may by declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of the Act, and thereafter the declarant and all his minor children and their descendants shall in matters of succession and inheritance be governed by the Muhammadan law."

In other words that law gives the right of choice to the person concerned whether he and his descendants will come under Muhammadan Law and it does seem to me, speaking with great deference and speaking of course as one completely outside—it cannot affect me and my people—that is a wise principle. I think it deserves very careful consideration whether it is not wise in these matters to give the individual the option and not to compel him to accept a rule of law of which he may be imperfectly informed. With these words, I support the motion before the House.

Mr. Chairman (Sir Leslie Hudson): The question is:

"That the Bill to make provision for the application of the Moslem Personal Law (*Shariat*) to Moslems in British India be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, the Honourable Sir Muhammad Zafarullah Khan, Maulvi Syed Murtaza Sahib Bahadur, Maulana Shaikat Ali, Qazi Muhammad Ahmad Kazmi, Dr. Ziauddin Ahmad, Sir Muhammad Yamin Khan, Syed Ghulam Bhik Nairang, Khan Bahadur Sheikh Fazl-i-Haq Piracha, Nawab Sahibzada Sir Sayad Mehr Shah, Maulvi Badrul Hasan, Khan Sahib Nawab Siddique Ali Khan, Mr. M. Asaf Ali, Dr. G. V. Deshmukh, Sir Muhammad Yakub, Mr. Muhammad Ashar Ali and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

THE MUSLIM INTESTATE SUCCESSION BILL.

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Mr. Chairman, there are two Bills in my name this afternoon, *viz.*, Nos. 13 and 14. My friend, Mr. Ghiasuddin, has pointed out that No. 13 is an unlucky number. Therefore, I request you that, instead of allowing me to move No. 13 first, you would allow me to move No. 14 first, and after it has been disposed of, I will take the unlucky number. (Laughter.)

Mr. Chairman (Sir Leslie Hudson): Both Nos. 13 and 14 stand in the name of the same Honourable Member, and, therefore, if the House will give permission to Sir Muhammad Yakub to move No. 14 first, that will not make any difference to the ballot which has been taken for the rotation of Bills. Will the House give permission to Sir Muhammad Yakub to move item No. 14 first? (*Voices*: "Yes, yes.") Sir Muhammad Yakub.

Sir Muhammad Yakub: [Sir, I move:

"That the Bill to declare that properties of a Muslim dying intestate, and without any heir devolve upon the Muslim Community, be circulated for the purpose of eliciting opinion thereon."

Mr. Chairman, I do not propose to make a long speech in moving this motion. I do not ask the House even to commit to the principle

of my Bill. I only want that public opinion should be elicited for this measure. This Bill is intended to provide that the estate of an intestate Muslim, subject to Muslim law, dying without any heir, shall devolve upon the Muslim community in accordance with the *Shariat* in preference to its escheating to the Crown. Sir, as I stated this morning, in connection with the other Bill, in matters of inheritance and succession, to both moveable and immoveable property, the law to be administered to Muslims is their personal law, which in this respect has not been altered or established by any legislative enactment. The pure rule of Muslim law is that the property of an intestate and heirless Muslim upon his death devolves upon the Muslim community on whose behalf the *Baitul-mal*, if existing in any locality, may receive it, or which may make any other arrangements for the custody, maintenance and expenditure of such properties. That is the object of my Bill, Sir, and with these remarks I move my motion.

Mr. Chairman (Sir Leslie Hudson): Motion moved:

"That the Bill to declare that properties of a Muslim dying intestate, and without any heir devolve upon the Muslim Community, be circulated for the purpose of eliciting opinion thereon."

The Honourable Sir Henry Craik: Sir, I support the motion, but I would like to point out that the point I made in regard to the effect of the previous Bill would apply to this Bill; that is to say, in so far as its purpose is to legislate in regard to the succession to agricultural lands, it will not be within the power of the Central Legislature to legislate upon that.

Sir Muhammad Yakub: I say that such estate shall devolve on the Muslim community and shall not escheat to the Crown; I refer to estate which otherwise would escheat to the Crown. However, that is a matter which can be discussed later on.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, in this connection I would like to point out one fact, though it does not come in directly within the scope of this Bill. In the year 1927, the late Honourable Mr. Haroon Zaffar moved a motion in the Council of State that the amount of interest not claimed by the Mussulmans and lying in the possession of Government ought to be handed over to some Muslim institution. Government gave a solemn undertaking on that occasion, but since 1927 attention has repeatedly been drawn to the fact that these balances of unclaimed interests ought to be handed over to some Muslim institution. For some time I think Government gave an account about the amount which was lying as unclaimed balances in the possession of the Government, but after 1931 even this account of unclaimed balances also disappeared, and we do not know at present what is the amount still lying in the possession of Government. So I think that the scope of this Bill may be extended slightly so that these balances of unclaimed interests lying in the possession of the Government might also be handed over to some Muslim institution. There are persons of a religious mind who do not take the interest on the securities in the possession of the Government, and I think that those amounts might also be transferred.

Babu Rajnath Bajaria (Marwari Association: Indian Commerce): Have the Government separate accounts?

Dr. Ziauddin Ahmad: They do not, I think, keep separate accounts, but I think this account should also be kept, and I take this opportunity to impress upon the Government that they have no claims whatsoever on the proceeds of any interest unclaimed by the Mussalmans, and I think these ought to be handed over to some Muslim charitable institution.

Mr. Chairman (Sir Leslie Hudson): The question is:

"That the Bill to declare that properties of a Muslim dying intestate, and, without any heir devolve upon the Muslim Community, be circulated for the purpose of eliciting opinion thereon."

The motion was adopted.

THE INDIAN SUBSCRIPTIONS BILL.

Mr. Chairman (Sir Leslie Hudson): Sir Muhammad Yakub.

Mr. G. H. Spence (Secretary, Legislative Department): Sir, before the Honourable Member is called upon to move his motion*

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): I think you can raise your objection afterwards?

Mr. G. H. Spence: No, I must take it now; I ask your ruling on the question whether, in the position existing today, on which broadly speaking the whole of the Government of India Act, 1935, except Part II, has come into operation, this Assembly retains any jurisdiction to proceed with this Bill. I submit, Sir, that it does not. Section 100 of the Government of India Act, 1935, is now in force; and the effect of that section is to confine the legislative jurisdiction of the Indian Legislature—to which, by virtue of section 316, the references in section 100 to the Federal Legislature are to be read as referring—to matters enumerated in List I and List III in the Seventh Schedule. In respect of matters enumerated in List II in that Schedule, exclusive legislative jurisdiction vests in the Provincial Legislatures, and in respect of matters enumerated in none of the Lists, no Legislature in India has jurisdiction to legislate unless and until an empowering notification is issued by the Governor General under section 104. Consequently, Sir, to sustain my contention that the Bill is one which this House is no longer competent to entertain, I have only to show that the matters in respect of which it seeks to legislate are not matters enumerated in either List I or List III. The Honourable the Mover will, I think, concede that for the most part no entry in List I and List III is of any possible relevance, but I understand that he will seek to relate the subject-matter of this Bill to entry No. 9 in List III, that is to say, trusts and trustees. But I submit that it cannot be related to that entry. You will see that in clause 8(b) provision is proposed to be made with the effect of expressly excluding funds forming the subject-matter of trusts created under the Indian Trusts Act from the operation of the Bill; while, if the Honourable Member seeks to fall back upon the argument that the monies with which his Bill deals

* "That the Bill to make provision for the better administration of moneys raised by public subscription and for ensuring the keeping and publication of proper accounts in respect of such moneys be circulated for the purpose of eliciting opinion thereon."

constitute constructive trusts, I must refer him to his own statement in the Statement of Objects and Reasons where, having referred to section 92 of the Code of Civil Procedure, he goes on to say that it would be difficult to establish in a Court of law whether subscriptions of all sorts can be included within the category of 'Express or Constructive Trust'. That, I think, would be very difficult indeed. If you look at clauses 3 and 4 you will see that the subject-matter with which the Bill seeks to deal are subscriptions and that it seeks to impose certain obligations on persons who have appealed for subscriptions for any charitable or public purpose. Now, Sir, I think it is pretty clear that in so far as the Bill seeks to provide for subscriptions raised for any charitable purpose the subject-matter of the Bill must be related to entry 34 in list 2, which, *inter alia*, embraces charities. If it is the case that subscriptions raised for public purposes, not being charitable purposes, are not within the scope of charities, then, I think, we must conclude that to that extent the subject-matter of the Bill is not within any list at all and that an empowering notification under section 104 would be a necessary condition precedent to any Legislature proceeding in the matter. For these reasons, it seems to me that this is a Bill with which this Legislature is no longer competent to proceed and I must ask your ruling on the matter.

Sir Muhammad Yakub: Mr. Chairman, I submit that the objection raised by the Honourable Secretary of the Legislative Department is not valid. In the first place, I would point out, that this Bill clearly comes within the purview of list No. 3, entry No. 9, which relates to trusts and trustees. It does not come within the purview of entry No. 34 of list No. 2, because public subscriptions need not necessarily be for charitable purposes or for charities. In fact, subscriptions generally are in the nature of trusts, and, therefore, this House has got the concurrent jurisdiction to enact laws with regard to these matters. Then, I have got a further submission to make in this connection and it is this that the utmost that can be held in this connection is that there is no clear provision about the subscriptions in the Act. If it is so, then I would refer you to section 104 which lays down:

"That the Governor General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the seventh Schedule of this Act."

Now, Sir, as my friend the Honourable Secretary of the Legislative Department has himself admitted that there is no clear provision with regard to this matter, I submit that it is not a matter of which this House cannot take cognizance. I submit therefore that my motion for circulation may be adopted and in the meanwhile I will take action under section 104 and will move the Governor General in Council to declare that this matter can be taken up by this House. There is nothing in the Act to prevent the introduction of this Bill for which there is no enumeration. What I mean to say is that there is no clear provision that the House cannot take cognizance of this Bill. If there were a clear provision in the Act that the Bill relates to a subject of which this House cannot take cognizance, then, of course, I would have been out of the court and I could not move this Bill. On the other hand, if there is a provision for concurrent jurisdiction in No. 9 to which I have just referred, then I submit that I may be allowed to move my motion. If it is considered later on that it is not covered by No. 9, then during the period when public opinion is collected I will take necessary action under section

[Sir Muhammad Yakub.]

104 and move the Governor General in Council to declare that this House is competent to legislate on this matter. Therefore, I submit, that there is no bar to my motion which is only for circulation.

Mr. G. H. Spence: May I say a word in reply to that? I think, Sir, that on the merits the Honourable the Mover really gave his case away when he relied on section 104 which, as I pointed out and he did not attempt to deny, gives power to the Governor General to empower either a Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated. If this is a law in respect of a matter not enumerated, then the Governor General has got to empower before section 104 can help the Honourable Member at all. As to the Honourable the Mover's contention that the ban is on enacting the law and that his Bill can go through the Legislature from the stage of introduction onwards, I submit that it is the plain duty of the President or of the person for the time being presiding to restrain this Legislature from taking into consideration a Bill which it is incompetent to enact.

Sir Muhammad Yakub: We are not taking this Bill into consideration at this stage.

Mr. G. H. Spence: Or from entertaining it in any way whatsoever.

Mr. Chairman (Sir Leslie Hudson): It seems to the Chair that it is evident that the subject of this Bill for the better administration of moneys raised by public subscription for charitable and other purposes is definitely laid down as being included in Part II, and, therefore, it belongs to the provincial legislative list. Sir Muhammad Yakub's reference to section 104 would probably have been perfectly in order provided a notification could have been obtained prior to the Bill being laid on the table of the House. That has not been done, and, therefore, the Chair must rule that it is not within the competence of this House to discuss this Bill.

THE CONTROL OF COASTAL TRAFFIC OF INDIA BILL.

Sir Abdul Halim Ghuznavi (*Dacca cum Mymensingh*: Muhammadan Rural): Mr. Chairman, I beg to move:

"That the Bill to control the Coastal Traffic of India be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Sir Muhammad Zafrullah Khan, Sir Muhammad Yakub, Bahu Baijnath Bajoria, Seth Haji Abdoola Haroon, Pandit Nilakantha Das, Pandit Krishna Kant Malaviya, Mr. Sami Vencatachelam Chetty, Dr. G. V. Deshmukh, Maulvi Syed Murtuza Sahib Bahadur, Sir Cowasji Jehangir, Sir Leslie Hudson, Mr. F. E. James, Mr. Akhil Chandra Datta, Dr. Ziauddin Ahmad and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, this is a very important measure and out of a House of 145 Members, of which forty are official and nominated Members, and 105 elected Members, I have obtained signatures of no less than 42 elected Indian Members in support of this Bill. I am sure every Indian elected Member will support this measure. This Bill is intended to remove a possible impediment to the growth and development of the Indian mercantile marine. Mr. Chairman, the Statement of Objects and Reasons

clearly specify that there is no question of any discrimination between British and Indian shipping. But, Sir, past experience shows that a well established powerful company engaged in coastal traffic can easily put a new venture out of action by unfair competition, that is rate cutting, grant of rebates, etc. The fear of unfair competition deters Indian capital being invested in coastal shipping. If the Governor General in Council be given power to prevent such competition, the fear will be largely allayed and a new line of commercial activity may be opened out to Indians. By this Bill power is given to the Governor General in Council, when he is satisfied that unfair competition exists, to fix minimum rates of fare and freight as well as to prohibit the grant of rebates or other concessions which are calculated to reduce such minimum rates. Contravention of any rule prescribed by the Governor General in Council in any direction given by him with regard to the grant of concessions is made punishable with fine or refusal of entry to an Indian port.

Mr. Chairman, before I proceed with the history of the coastal shipping, I will give you briefly a statement why this Bill is introduced.

Sir, this Bill is a modest piece of legislation whereby it is intended to check, if not altogether prevent, unfair competition which has ruined in the past so many Indian ventures in coastal shipping and which has deterred Indian capital being invested therein. It is not discriminatory in its application inasmuch as it affects all offenders—be they Indian or non-Indian. As a matter of fact it proposes to deal with the kind of abuses in the shipping line which was referred to by Mr. M. R. Jayakar and His Grace the Archbishop of Canterbury in the course of the examination of Sir Samuel Hoare, the then Secretary of State for India, before the joint Committee on Indian Constitutional Reform when it was stated that a piece of legislation of the present character would not come under the discriminatory proposals embodied in the new constitution.

Then, again, we find, Sir, a hue and cry in the British shipping circles against the unfair competition from foreign shipping. It was only recently that the Honourable Mr. Alexander Shaw, Chairman of the P. & O. Company, in his presidential address to the Institute of Marine Engineers put forward a strong plea for action on the part of the British and the Dominion Governments to save British shipping from the consequences of unfair foreign competition and demanded from them a policy of active support to British shipping.

I may be permitted in this connection to refer briefly to the report of the Tramp Shipping Administrative Committee issued recently in London in the form of a White Paper. It is a significant document which illustrates what Government are doing in other parts of the world for their shipping and should serve as an object lesson to Government of India. In the words of the *Hindustan Times*, this Report may be summed up as follows:

The report is the result of the Committee's experience of the period of two years during which the £2,000,000 subsidy had been helping the tramp shipping industry in Britain. The Committee state that the grant of the subsidy had not only saved British tramp shipping from collapse, but had restored its confidence, stopped the abnormal sale of tramp ships abroad and laid the foundation for the replacement and possible expansion of the British tramp fleet. The subsidy has helped to increase the employment of tramp ships and almost eliminated unemployment among British seamen. The report adds that the subsidy has led indirectly to

[Sir Abdul Halim Ghuznavi.]

improved business and employment in ancillary trades such as ship-building and repairing. As important as the subsidy itself, was the action taken by the Government in insisting on the industry organizing itself, and establishing a system of co-operation between British and foreign shipowners and rationalizing tonnage. In order to prevent possible dissipation of the subsidy, the Government had insisted on the industry minimizing domestic competition; the employment of British seamen was also insisted on. No wonder that, as the result of such purposive endeavour, the Committee are in a position to state that almost every British ship available and every British seaman has been able to find employment.

This reference to the achievements of British tramp shipping with the help of the substantial subsidy from Government has a two-fold objective. Similar help to the Indian shipping industry from the Government of India if possible will be valuable, inasmuch as it will not only lead to the re-emergence of the Indian ship-building industry, but to the employment of large numbers of Indian seamen and others. Then again the value of an Indian mercantile marine as an efficient asset in the national system of defence and economy is obvious, and a Government, which professes to train us to govern and defend ourselves, should not overlook such an obvious task. In point of fact, however, vested interests have been opposing even so meagre a measure as the reservation of the coastal traffic to our own bottoms and will take exception even to this still more modest measure.

May I not, therefore, Sir, justly say that what is sauce for the gander is also sauce for the goose. If Britain as the pioneer in the field of shipping and holding the premier position amongst the maritime countries of the world requires protection against unfair competition, how much more is it necessary that unfair competition and rate-wars should be prevented with a view to encourage the development of an Indian Mercantile Marine.

The Government of India have not only expressed themselves repeatedly to be in full sympathy with the widespread desire of Indians that India should possess a merchant fleet of her own but they have also repeatedly declared it as their policy to facilitate the growth and expansion of coastal trade of India in so far as that coastal trade is operated by Indian agencies and through the instrumentality of Indian capital. It is time now, therefore, that their declarations and statements of policy should be implemented and translated into tangible and concrete action.

I do think that Indian shipping like other national industries is entitled to exist and develop on its own inherent right and not be allowed to live through the favour and grace of its competing interests. I therefore consider that Government should possess adequate powers themselves to prevent the annihilation of Indian shipping enterprise and to secure for it economic conditions of employment on the Indian coast.

Sir, as I have already stated, the object of the present Bill is to encourage the development of an Indian Mercantile Marine and the method proposed is to remove an impediment to its existence, growth and development by making it impossible for any shipping concern to carry on rate-wars with impunity in the future as in the past. I earnestly

appeal to Government to judge this Bill in its broad aspect as one designed for the prevention of ruinous and unfair competition in the coastal trade of India and not split hairs as regards this word or that sub-clause in determining their attitude to the measure as indeed was attempted to be done by the Honourable Mr. Dow in the Council Chamber when the Honourable Mr. Sapru moved for reference of this Bill to a Select Committee of that Honourable House. If the evil complained of exists and if it runs counter to the declared professions of the Government to develop an Indian Mercantile Marine, it would, I submit with respect, not be an answer to it that the Bill as introduced is badly drafted, or that its penalty clause is impracticable, or that the separation of Burma from India creates a difficulty, or that minimum rates can be got round by secret rebates, or that minimum rates encourage the growth of mushroom companies or to draw fanciful comparisons as regards the fashioning of this Bill with that of *Don Quixote's* helmet.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

That is really evading the issue and not dealing fairly and squarely with it. Instead of these unsubstantial criticisms one should have expected the Government of India to introduce a suitably drafted Bill to deal with the troubles and difficulties which undoubtedly exist and which have to be got over before an Indian Mercantile Marine can come into existence. Not only is this not being done, but every effort is being made to defer and delay the modest effort in that direction embodied in the present Bill, and eventually to kill it with kindness and assertions of Government's intention to assist in the building up of an Indian Mercantile Marine. I have no doubt that the principle of the Bill will be acceptable to an over-whelming majority of this Honourable House and such defects as exist in its provisions are really to be considered, discussed and got over in the Select Committee. I have no objection and can possibly have none to any reasonable modification or amendment in the measure which will prevent unfair competition, the principle underlying the Bill, and at the same time enable Indian shipping to exist and develop, which is the object of my Bill.

Sir, it is not necessary to go into the whole history of Indian navigation and maritime activities in order to realise that India has a remarkable tradition in the matter of shipping. I would refer, for instance, to the History of Indian Shipping by Dr. Radha Kumud Mukherji and many other similar works for the tradition and achievements of Indian maritime activity from the earliest times. But even after the advent of British rule in India, Indian ship-building and navigation were in a flourishing condition, and numerous authorities could be cited to show the skill of Indian shipbuilders and Indian sailors as well as the strength and beauty of Indian built ships. I could cite British authorities to show how British shipbuilders and shipping interests viewed the existence of competition of Indian built and Indian owned ships and what steps were taken to prevent the employment of Indian built ships in the trade between England and India. I am mentioning all this in order to show that Indian shipbuilding and shipping industry had made great progress in the past, and Indian navigators and sailors were known all over the world for their skill and endurance. Sir, since Britain was the pioneer in the industrial field and shipping, British shipping came gradually to

[Sir Abdul Halim Ghuznavi.]

control not only the trade between India and England but even the coastal trade of India itself. I believe, Sir, that the P. & O. company secured the mail contract for India in 1842, that is, nearly 94 years ago, and the British India Steamship Navigation Company received the subsidy for the carriage of mails between Calcutta and Rangoon in 1853 from the East India Company and has been receiving it from the Government of India since 1863, that is, for the last 75 years. Sir, I need not point out that this subsidy was

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, I beg to point out that there is no quorum.

(The bell was rung for two minutes.)

Mr. President (The Honourable Sir Abdur Rahim): As there is no quorum, the Assembly is adjourned.

The Assembly then adjourned till Eleven of the Clock on Friday, the 2nd April, 1937.