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THE
COUNCIL OF STATE DEBATES

VOLUME I, 1939

(23rd January to 18th April, 1939)

FIFTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1939

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COUNCIL OF STATE.

Monday, 27th February, 1939.

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

QUESTIONS AND ANSWERS.

THE HONOURABLE THE PRESIDENT : The Honourable Mr. Biyani (Question No. 115).

THE HONOURABLE MR. G. S. MOTILAL : May I put this question, Sir ?

THE HONOURABLE THE PRESIDENT : Have you been authorised ?

THE HONOURABLE MR. G. S. MOTILAL : Under Standing Order 18 no authority is required. It reads thus :

“ If on a question being called it is not put or the Member in whose name it stands is absent, the President at the request of any Member may direct that the answer to it be given ”.

THE HONOURABLE THE PRESIDENT : Yes, but I ruled some time ago that the Honourable Member who is going to be absent has to authorise in writing somebody else to put the question, and that ruling has been followed for the last six years here.

THE HONOURABLE MR. G. S. MOTILAL : May I request you to consider this point ? The Standing Order provides as I have stated above.

THE HONOURABLE THE PRESIDENT : I have carefully considered the point. There is perhaps a lacuna in the Standing Order. Request must be made by the absent Member. The Standing Order is quite precise.

THE HONOURABLE MR. P. N. SAPRU : What you have stated, Sir, has been the practice always here.

THE HONOURABLE MR. RAMADAS PANTULU : I am authorised in writing.

THE HONOURABLE THE PRESIDENT : I do not wish to cause any inconvenience, but please do not take this as a precedent—

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : The Honourable the Leader of the Congress Party says he is authorised in writing.

THE HONOURABLE MR. RAMADAS PANTULU : Yes, Sir. But we wanted to get a ruling from you as to the meaning of that Standing Order.

THE HONOURABLE THE PRESIDENT : I do not change my rulings very frequently.

THE HONOURABLE MR. HOSSAIN IMAM : You have restricted your own powers. You have full discretion.

ARREST OF MR. VIRENDEA CHATTOPADHYA BY THE SOVIET.

115. THE HONOURABLE MR. RAMADAS PANTULU (on behalf of the Honourable Mr. B. N. Biyani) : Will Government state :

(a) Whether Mr. Virendra Chattopadhyia has been arrested by the Russian Government ?

(b) If so, have Government inquired into the reasons of his arrest ?

(c) Is he still under arrest or has he been released ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : (a), (b) and (c). In reply to inquiries made through the British Embassy at Moscow, the Soviet authorities have reported that they possess no information regarding the whereabouts of Mr. Virendra Chattopadhyia. Further representations are, however, being made by His Majesty's Ambassador, Moscow.

PASSPORTS FOR FOREIGNERS ENTERING BRITISH INDIA FROM THE FRONTIER TRIBAL AREAS.

116. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government state whether they are considering the introduction of a passport system in the case of foreigners entering British territory from Frontier tribal areas who are generally committing abduction, dacoity and other serious crime in the North-West Frontier Province in particular and the rest of India in general ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : The entry of foreigners from Frontier tribal areas into British India is governed by the Indian Passport Act, 1920, and the rules made thereunder. Certain classes of persons are exempted, under rule 5 of the Rules, from the necessity of obtaining passports. The Government of India are not considering any revision of these exemptions, nor do they admit the correctness of the insinuation contained in the last sentence of the Honourable Member's question.

THE HONOURABLE MR. HOSSAIN IMAM : Are these people regarded as foreigners ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : I should like to have notice of that, but as far as I know, I think they are protected British subjects. But I should like my Honourable friend to put a question down if he wants an answer.

CONSULTATION WITH COMMERCIAL BODIES IN CONNECTION WITH INDO-AFGHAN TRADE TALKS.

117. THE HONOURABLE MR. RAMADAS PANTULU (on behalf of the Honourable Mr. B. N. Biyani) : Will Government state :

(a) Whether the A. P. message, dated New Delhi, December 12, 1938, published in the *Hindustan Standard* of Calcutta, dated December 14, stating that the trade talks between the Afghan Minister and the representatives

of the Commerce and Foreign Departments of the Government of India are in progress, is correct ?

(b) If so, have Government consulted the Federation of Indian Chamber of Commerce and Industry or the Frontier Chamber of Commerce or any other commercial interests in India while negotiating the trade pact with the Afghan Government ?

(c) Whether Government have received any communication from the Committee of the Federation of Indian Chambers of Commerce and Industry, New Delhi, in this connection ?

(d) If so, do Government now propose to consult such Indian commercial interests concerned ? If not, why not ?

THE HONOURABLE MR. H. DOW : (a) Yes.

(b) No.

(c) Yes.

(d) No. The trade talks referred to in part (a) of the question were purely of an exploratory nature, and the trade interests concerned have been given, and have availed themselves of, the opportunity to express their views direct to the representatives of the Afghan Government.

AIR RAID PRECAUTIONS.

118. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government lay on the table of this House a copy of the instructions which they have given to various Provincial Governments with regard to (i) defence and (ii) protective measures against enemy aerial attacks ?

THE HONOURABLE MR. F. H. PUCKLE : With your permission, Sir, I propose to reply to questions Nos. 118 and 119 together.

2. Air raid precautions fall under two heads, active and passive. Active defence against air raids is a military measure and it would not be in the public interest to disclose the steps which are being taken. The Honourable Member may, however, rest assured that the matter has received full consideration from the military authorities. Passive air raid precautions, e.g., protection of the civil populace against the results of air raids, involve action which is primarily the responsibility of Provincial Governments and Administrations. The conclusions of the Committee referred to in the answer given on September 5th, 1938, to the Honourable Member's question No. 2, have been communicated to Provincial Governments and Administrations concerned and they have been invited to make a survey of their own position. The instructions are confidential and cannot be made available to the House, but I may mention that the arrangements for passive defence measures will be initiated by the Provincial Governments and Administrations with the advice of Area Committees, on which the Central Departments concerned including, in an advisory capacity, the Defence Services, will be represented. Among the matters which the Area Committees will consider in preparing their local schemes will be—a warning system, lighting restrictions; protection against high explosive bombs; fire fighting arrangements and protection against incendiary bombs; anti-gas protection and decontamination; maintenance of vital services; first aid and medical arrangements; control of the civil population and co-operation with the defence services. The Area Committees may be expected to give full attention to all local circumstances affecting the protection of the civil population within their areas. Provincial Governments and Administrations have, however, been informed that the volume

of air attack to be expected in India is not as far as we can see at present likely to be large and they will no doubt take this appreciation into account in formulating their schemes.

THE HONOURABLE MR. HOSSAIN IMAM: Has any date been fixed for the reply of the Provincial Governments ?

THE HONOURABLE MR. F. H. PUCKLE: No, Sir. It has been left to Provincial Governments to communicate their schemes if and when they prepare them.

AIR RAID PRECAUTIONS.

119. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:** Will Government state in detail the measures which they propose to undertake to defend and protect the public from enemy aerial attacks in areas administered by the Central Government ?

(See reply to question No. 118.)

FOREMEN RECRUITED FOR WORKSHOPS OF STATE-MANAGED RAILWAYS.

120. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:** Will Government state how many foreign skilled foremen they have imported this year for workshops on each of the State-managed railways and also state whether these foreign skilled foremen have replaced Indians ? If so, on what salaries and allowances have they been brought and why ?

THE HONOURABLE SIR GUTHRIE RUSSELL: The reply to the first part is "none". The other parts do not therefore arise.

LITERATE FIREMEN RECRUITED ON THE N. W. R. AND OTHER STATE-MANAGED RAILWAYS.

121. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:** Will Government state how many literate firemen in Class "C" have been recruited this year on the N. W. R., as well as on each of the other State managed Railways ? If no such recruitment has been made on the N. W. R., why ?

THE HONOURABLE SIR GUTHRIE RUSSELL: I am obtaining the information asked for and will lay a reply on the table of the House in due course.

PUBLICATION OF THE TARIFF BOARD'S REPORT ON SUGAR.

122. **THE HONOURABLE MR. G. S. MOTILAL:** (a) Have Government decided not to publish the Report of the Tariff Board on Sugar for another three years ?

(b) If so, what are the reasons for this decision ?

(c) If not, do Government propose to publish it and if so, when ?

THE HONOURABLE MR. H. DOW: (a) No, Sir.

(b) Does not arise.

(c) The Report is under consideration and will be published as soon as Government have passed orders on it.

THE HONOURABLE MR. HOSSAIN IMAM : Before the end of this session, or during the session, Sir ?

THE HONOURABLE MR. H. DOW : I am unable to give a more precise answer at present.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Will Government consider the desirability of publishing it before the Budget is discussed ?

THE HONOURABLE MR. H. DOW : I have already said that I am not able to add to my answer to the last part of the question.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : How long has this Report been under consideration ?

THE HONOURABLE MR. H. DOW : Since it was received.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : When was it received ? I asked, "How long has it been under consideration ?" and if you say, "Since it was received", the next question will be, "When was it received ?"

THE HONOURABLE MR. H. DOW : I am afraid I cannot answer precisely without notice, but I think the period is about 15 months.

NEW INDO-BRITISH TRADE AGREEMENT.

123. THE HONOURABLE MR. G. S. MOTILAL : Will Government state as to when the new proposed Trade Agreement between the United Kingdom and India will be placed before the Central Legislature for their opinion and decision ?

THE HONOURABLE MR. H. DOW : It is the intention if a new Trade Agreement is concluded, to place it before the Legislature in the current session.

EXPENDITURE INCURRED IN CONNECTION WITH THE INDO-BRITISH TRADE NEGOTIATIONS.

124. THE HONOURABLE MR. G. S. MOTILAL : Will Government lay on the table a statement of expenditure made by them in connection with the Trade Agreement negotiations with the United Kingdom ?

THE HONOURABLE MR. H. DOW : I lay on the table a statement giving the required information.

Statement showing the expenditure incurred in connection with the Indo-British Trade Negotiations including the salaries of officials placed on special duty for these negotiations.

<i>In India.</i>		Rs.
1936-37	6,442
1937-38	27,411
From 1st April, 1938	26,141 (latest figures available).
Total	59,994

In England.

	£	s.	d.
Year ended 31st March, 1938	13,561	11	5
1st April, 1938, to date	2,652	0	0
	<hr/>		
Total	16,213	11	5 or Rs. 2,16,18F
	<hr/>		

Total for India and England Rs. 2,76,175.

SCHEMES AND PLANS FORMULATED BY THE ECONOMIC ADVISER TO THE GOVERNMENT OF INDIA.

125. THE HONOURABLE MR. G. S. MOTILAL: (a) Will Government state whether any schemes and plans for the economic and industrial advancement of India have been formulated and submitted by the Economic Adviser who has been employed since his appointment more than a year ago?

(b) If so, what are those schemes and plans and in what respect are they helpful to India or England?

THE HONOURABLE MR. H. DOW: For the nature of the Economic Adviser's duties the Honourable Member is referred to the Proceedings of the Standing Finance Committee for the 11th February, 1937, pages 124-25. He will find a more popular account at pages 154-55 of the Indian Information Series for the 15th May, 1938. Copies of both of these documents will be found in the Library. Government consider that Dr. Gregory is proving entirely adequate to the duties for which he was recruited.

THE HONOURABLE MR. HOSSAIN IMAM: What about part (b) of the question?

THE HONOURABLE MR. H. DOW: My answer covered both parts. I admit that the answer which I have given is not a very direct one, but the nature of the question is mainly responsible for that. The question assumes that Dr. Gregory's duties are something quite different from what they are, and I thought the best answer I could give was to explain what the nature of those duties really is.

NON-PUBLICATION IN THE *Indian Trade Journal* OF EXPORTS OF COTTON PIECEGOODS TO BURMA.

126. THE HONOURABLE MR. G. S. MOTILAL: With reference to the figures of exports of Indian-made cotton piecegoods published in the *Indian Trade Journal*, will Government state the reason for not showing specifically exports to Burma? Do Government propose to consider the desirability of henceforth doing it?

THE HONOURABLE MR. H. DOW: Exports of cotton piecegoods to Burma are not shown at present in the *Indian Trade Journal* owing to limitations of space but the question of showing them in the future is under consideration.

PAID APPRENTICES OF THE E. I. R. TO BE CONSIDERED AS IN GOVERNMENT SERVICE.

127. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government state :

(a) Whether by any notification of the Government of India a paid apprenticeship in the Technical School at Jamalpur, E. I. R., was to be considered as Government service? If so, what is the date and number and terms of such a notification?

(b) Whether the Railway Board have issued any notification that the revised scales of pay (1934) for non-gazetted staff, which were introduced for the new entrants who joined service after 19th May, 1934, were to be applicable to all persons appointed on or after 16th July, 1931, unless they were warned at the time of the competitive examination by which they were selected, that the rates of pay of the posts for which they were candidates were under revision? and

(c) Whether some candidates who had been selected from the results of the competitive examinations held at Jamalpur between 1926 and 1931 without any such warning, had subsequently been absorbed in the permanent staff? If so, have they been given the benefit of the above two notifications? If not, why, and whether Government propose to consider their cases favourably?

THE HONOURABLE SIR GUTHRIE RUSSELL : (a) There is no notification, but departmental instructions were issued in July, 1934, to the effect that a paid apprentice, on the 15th July, 1931, should be considered as in Government service on that date for the purpose of the Finance Department's Resolution No. D/4523-Ex.1/31, dated 9th July, 1931, published in the *Gazette of India*, dated 11th July, 1931.

(b) No. The orders issued by the Railway Board are contained in their letter No. 807-E. G.II, dated 31st August, 1934. In accordance with these orders the E. I. R. Administration in their circular No. AE 2581/1, dated 4th September, 1934, issued instructions accordingly. Both the letter and the circular referred to are in the Library of the House.

(c) Government have no information, but I am sending a copy of the Honourable Member's question and my reply to the General Manager of the E. I. R. for such action as he may consider necessary.

THE HONOURABLE MR. HOSSAIN IMAM : Will the Honourable the Chief Commissioner lay on the table the answer received from the General Manager?

THE HONOURABLE SIR GUTHRIE RUSSELL : I am not prepared to commit myself to that.

CONDITIONS OF TRAVEL OF OFFICERS OF THE CENTRAL GOVERNMENT.

128. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government state :

(a) What facilities of railway travel are granted to public officers of the civil departments of the Government of India? and

(b) Whether the Supervisor of Railway Labour is a public officer of the civil department of the Government of India and what facilities of railway

travel are granted to him and what is the total cost to Government for affording such facilities to him from 30th July, 1938, up till the end of the year?

THE HONOURABLE MR. M. S. A. HYDARI : (a) The conditions of travel of officers of the Central Government are governed by the provisions of the Supplementary Rules, a copy of which is in the Library of the House.

(b) Yes. The conditions of travel of the Supervisor of Railway Labour are also governed by the Supplementary Rules. On the analogy of the facilities afforded to officers of the Railway Audit Branch of the Indian Audit Department whose conditions of travelling are similar, he has been permitted under the Supplementary Rules the use of an inspection carriage, when available. The cost from the 30th July, 1938, to the end of the year is Rs. 12,483.

DISCOVERY OF MARBLE IN THE HILLS NEAR MUSSOORIE.

129. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government state whether any marble quarry has been discovered in the Mussoorie Hills? If so, who are the owners and lessors thereof and what are the terms and conditions of the lease?

THE HONOURABLE MR. M. S. A. HYDARI : Information regarding the first part of the question has been called for and will be furnished in due course. The latter part of the question relates to a matter which is now a provincial responsibility.

RESOLUTION RE PURCHASE OF STATIONERY, ETC., OF INDIAN MAKE.

**THE HONOURABLE MR. RAMADAS PANTULU (Madras : Non-Muham-
madan) :** Sir, I move :

"That this Council recommends to the Governor General in Council (i) to make it obligatory for the Government offices connected with the Central Government to use only swadeshi articles, if available in India, for office equipment and (ii) to discontinue the use of bideshi articles in these offices unless they are such as are not manufactured in India and are absolutely necessary."

Sir, it will be seen that my Resolution is a very modest one and its scope is very limited. Nevertheless it raises a very important question of principle which covers the whole policy of the Government of India in regard to the trade, commerce and industry of this country. But I am not going to dilate on those policies today and I shall confine myself closely to the Resolution itself. Sir, I want the Government of India to be 100 per cent. swadeshi. That is the object of my Resolution. When I look round here I find that the Government are supplying us with many foreign articles for which they can find Indian substitutes without any difficulty. First of all the agenda and other literature placed on the table for the use of the House are not printed on swadeshi paper. I know that this scrap notebook is made of swadeshi paper, but I think that all the other voluminous records supplied to us in the form of bills, memoranda, notes, etc., are all printed on foreign paper. I find that the pencil supplied to me and other Members is not an Indian pencil. It is made in Bavaria. There are many other articles of the same nature. I want in fact every servant of the Crown in this country to clothe himself in swadeshi. I want all the police force and the defence forces in India to be supplied with uniforms made of Indian cloth.

THE HONOURABLE THE PRESIDENT : Why not the Honourable Members? (Laughter.)

THE HONOURABLE MR. RAMADAS PANTULU : The Members of course, Sir, I am speaking of the Government now. Certainly the Members should be the first to adopt swadeshi; otherwise they are not Indians. I am not making any extravagant demand because it is now conceded that at least so far as textiles are concerned, India can manufacture and supply cloth of a quality which any other country can supply. There is not the slightest justification for the Government to import foreign articles much less cloth for supply in the Central Government's offices. The Provincial Governments have now made a very distinct departure in this matter and as far as it lies in their power they have now excluded foreign articles and are purchasing Indian articles. The paper used by the Provincial Governments, conducted by the Congress, is swadeshi paper. They have practically excluded foreign paper from use in their offices. I really do not see why the Central Government should not now follow the practice of the autonomous Congress Provincial Governments in their offices. It may look to some of the Members of this Honourable House that the demand I put forward is of a somewhat curious nature. But if they turn to the proceedings of Parliaments in other countries they will find that it is a practice which is insisted upon in every country. In England from very early times the House of Commons has insisted on swadeshi or English articles being used in the House and objected to foreign articles in the precincts of the House. I have come across a question and answer put in the House of Commons sometime ago which I may refer to in this connection :

"Mr. Maclure (M. P.) asked the First Commissioner of Works whether the chairs in the reporters' gallery and furniture in other parts of the House were of foreign manufacture and why preference was given to foreign over British and Irish trade."

The answer of the First Commissioner of Works was thus :—

"The only furniture of foreign manufacture in the House of Commons is limited to a number of chairs supplied to the press gallery and this was done some years ago. With this exception all the articles in use are of British manufacture."

THE HONOURABLE LT.-COL. SIR HISSAMUDDIN BAHADUR (Nominated Non-Official) : What book is that, Sir ?

THE HONOURABLE MR. RAMADAS PANTULU : Major Basu, on *Indian Trade and Industries*, page 179.

Sir, I can cite the examples of other Governments and Parliaments in connection with the use of indigenous articles manufactured in those countries. When I am asking the Government of India to use only articles of Indian manufacture in all their central offices and their equipment must be entirely from indigenous sources, I am not asking for anything extravagant. Sir, there is a question of principle involved as I have already said. The policy of the Government has been for a long time to unduly favour the manufactures of England to the detriment of this country. I quite admit that that policy has undergone a change in recent years, but I think the spirit is still there and the underlying principles of the present policy are more or less the same as they stood some years ago. Sir, the policy of the Government of India was stated in the words which I shall quote by Sir John Strachey in 1877 when he introduced the financial statement of that year. It was in relation to the cloth duties. He said :

"I am not ashamed to say that while I hope that I feel as strongly as any man the duties which I owe to India, there is no higher duty in my estimation than that which I owe to my own country. I believe that my countrymen at home have a real and very serious grievance."

This is what he said at that time.

THE HONOURABLE THE PRESIDENT: Since then many changes have been made and things are quite different now. Since Sir John Strachey made that declaration, valuable and beneficial changes have been made. We all know that after the statement the Chief Commissioner made regarding the Indian Stores purchases.

THE HONOURABLE MR. RAMADAS PANTULU: But the change is very far from tangible to some of us. The change has not been very radical and I will read to you a small passage which recently appeared in the *Morning Post* in England which reflects the opinions of the industrial and commercial interests in England. It says more or less the same thing as what Sir John Strachey said in 1877. I shall read that passage, because you have put me that question. The *Morning Post* says:

“ We have a direct concern in India because it is one of the chief markets of the world. We went there as traders, and despite all the fine talk of our modern highbrows that is still the material basis of our rule ”,

which might be put in the sentence :

“ We give you protection and you buy our goods. If we abandon India, it will not be only the Indians who will suffer, but the 12 million people of Lancashire, and indeed our whole industrial system which will be affected. After all, when all is said, this nation must live. That is the first consideration, and we see no other way in which this nation can live upon these little islands save by industry and trade ”.

Sir, to be more recent. We have all read the statement made by the British Premier with regard to the progress of the Indo-British Trade Agreement. If he is correctly reported it is said that he assured the Lancashire interests that —

“ The Government would not be prepared to accept any new trade agreement with India unless it gave a satisfactory deal to Lancashire cloth trade ”.

I am quoting the words exactly. Sir, we are not against a trade agreement between England and India. If such an agreement gives equal and reciprocal advantages and does not impair any of our developed industries, we are quite willing. I know that every country ought to import something and export something. Therefore, we are willing to import such articles from England as will not interfere with our own industries and we are quite willing to export to England such articles as would be of advantage to this country to sell abroad. It is only on these conditions that trade agreements can be implemented. We cannot subscribe to the British Premier's statement that the British Government would not agree to any trade agreement unless it gave a satisfactory deal to Lancashire cloth trade. In the matter of the cloth trade no preference should be given to any other country because we can manufacture all the cloth that this country requires and we can also export cloth to other countries. (*An Honourable Member:* “ You will not pay anything to the exchequer ”?) No, Sir, not to help the Government's idea still to secure and develop Indian markets for British goods at any cost. This is the keynote of the demands made by British industrial and trade interests in and out of Parliament. His Majesty's Government and the Government of India are anxious to placate those vested interests. I want a complete reversal of that policy and I want the Government of India, as I have already stated, to be completely swadeshi-minded. Sir, the Government of India are not unaware of the potentialities of India as a manufacturing country and its capacity to produce almost every kind of article which Government require. The great experiment made during the war in opening new industries, in opening new factories, must have disclosed to the Government of India that India is capable of producing all the

articles which the Indian Government requires for its use, because I am confining myself to that position now. Soon after the war England found that her factories could be turned into peace-time factories for manufacture of goods and they began to import goods into this country which we ourselves made in wartime. Following on the heels of that change of policy many new factories and industrial concerns which were set up during the war were closed down later. It is not as if I am stating anything that the Government of India themselves do not know. It is carrying coals to Newcastle. I want a change of heart in regard to the Government of India's policy in regard to Indian trade and commerce. Sir, it may not be out of place if I refer to discriminating protection, Imperial preference and other large questions of policy. For the purpose of my Resolution today I need not however enter into any discussion on those policies. All that I want to examine today is the Government of India's policy of purchase of their requirements in this country. Sir, the only official source of information that I have is the Administration Report of the Indian Stores Department. It is a very useful publication, but I am sorry to say that it does not give adequate information which is relevant for the purpose of my Resolution. Sir, this Report deals with two classes of goods purchased by the Government of India through the Stores Department. They are classified under two heads. One head is textiles and leather, the other is engineering and miscellaneous stores. Unfortunately for me I have not got any details as to the quantity of indigenous articles and imported articles in regard to the second class. With regard to textiles and leather we have got very full information. But I will give you some figures which relate to the purchases from the Stores Department. In the year 1937-38 the Indian Stores Department purchased Rs. 7.89 crores worth of goods, of which Rs. 1.58 crores related to textiles and leather, and Rs. 6.31 crores was engineering miscellaneous stores. Sir, under the second head, this Report does not give any information as to the proportion of the indigenous to the imported goods purchased by the Government of India. Therefore, I cannot say how much of these miscellaneous stores, among which certainly must be the requirement of the Government of India for its office equipment, is from indigenous and how much from other sources. All that it shows is what proportion is purchased from the Indian market and what proportion is imported from outside India. Purchasing from the Indian market is not certainly any indication that the articles are of indigenous origin, because many firms in India import and stock foreign articles. What is happening is that importers of British articles and other foreign articles into British India are being largely patronised by the Stores Department and their figures showing the quantities of goods purchased in the Indian market can give us no clue as to the origin of the goods, whether indigenous or foreign. Therefore, Sir, this Report must be made a little more useful to Indian readers by inserting details in regard to these large purchases of Rs. 6.31 crores in the last year by the Stores Department as to how far these goods are of Indian origin and to what extent they are imported. So in the absence of this information it is difficult to say what the proportions are, until the Honourable Member in charge of this portfolio will give us some information under head 2 in the classification of the Indian Stores Department's Administration Report.

Sir, with regard to railways, we have dealt with the question already and I do not wish to repeat what I said. The stores purchase policy of the railways has been criticised both in this House and in the other House and still very large quantities of goods are purchased from foreign markets and so far as the Railway Board are concerned, and various administrations under them are concerned, I think a large quantity of goods of foreign origin are still

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being utilised and imported for their office equipment. Of the Rs. 8.69 crores of purchases by the Indian State-managed railways Rs. 3.22 crores was imported from outside India this year. In the previous year, out of Rs. 7.97 crores, Rs. 2.64 crores was imported and in 1935-36, out of a total purchase of Rs. 9.57 crores, Rs. 3.43 crores was imported.

THE HONOURABLE THE PRESIDENT: But we do not know whether they could be manufactured in India.

THE HONOURABLE MR. RAMADAS PANTULU: True. I do not know. I want to know. The Report says that they are "Imported from outside". It does not show whether they could not be manufactured in India. Of course, as regards the stores purchased in India, part of it may be goods manufactured in India and part of it foreign.

Sir, these figures I have cited to show that there is vast scope for improvement in the purchase policy of the Government of India. Sir, with regard to this, there are a few articles like paper, about which I wish to say one or two words. Sir, the paper industry is a very old industry in this country. I will give you a very authentic passage from a British historian as to the way in which the Indian paper industry was ruined in this country. The book I refer to is Sir George Watt's *Commercial Products of India*, in which he gives a brief history of the manufacture and use of paper in different countries of Asia, including India. I will read only one sentence:

"Prior to 1840 India obtained a large share of its paper supplies from China. About that date interest was aroused in the subject, and both Hindu and Muhammadan factories for hand made papers were established all over the country. During Sir Charles Wood's tenure of the office of the Secretary of State for India, an order was issued for the purchase of all the supplies required by the Government of India in Great Britain, and this threw back very seriously the growing Indian production".

Sir Charles Wood was the grandfather of Lord Irwin, the ex-Governor General of India, now Lord Halifax, and is generally known for his Education despatch. But he should be remembered also for the despatch which contributed largely towards the decay of the indigenous paper industry of India. Sir, we have just been trying to recover from the shock. We have been trying to revive the old paper industry that has been destroyed in this country. Now, Sir, there are now once more very good paper mills of modern type in India which manufacture paper of a very superior quality. But I do not know what encouragement the Government is giving to the Indian paper industry. There is no reason why Government should not encourage a growing industry like the paper industry. It may be said: What about quality and price? I am told that paper of good quality is now made in India. On the question of price I want to be satisfied that the Indian taxpayer will be adversely affected if Indian paper is purchased, even if it were a bit more costly than foreign paper. That would not be sufficient reason for not purchasing Indian paper, because if the paper industry in this country is encouraged it will give employment to some people who are now unemployed. The country will stand to gain by the development of the paper industry, even though Indian paper may be slightly more costly. But, Sir, my information, from the inquiries I have been able to make, is that Indian paper required for ordinary office use is not more costly than imported paper and its quality is not inferior. At any rate, for the routine purposes of the Government of India, there is no reason why Indian paper should not be used. Sir, I have already drawn attention to the fact that every day we are put to the

humiliation of writing with a foreign-made pencil. In Madras we have got an excellent factory which makes pencils of equal quality with Bavaria. The Government Department of Industry in that province have certified to the quality and good service of the pencils manufactured in Madras. (*An Honourable Member*: "Is the Madras pencil factory encouraged by the Government"?) My friend was a Member of the Madras Government and must know all about it. (*An Honourable Member*: "You are speaking here on behalf of the Congress Government".) Sir, I do not wish to take any notice of the interruption. What I am saying is that these articles which are in daily use in the Legislatures and the offices of Government are obtainable in India and if my friends on the other side say that their quality is inferior and that their price is much more than that of the foreign article, that might be some reason for not using them. But even then that will not be a reason, so far as I am concerned for I want to use an Indian pencil though it costs a little more unless it is unserviceable. I am not ashamed of it. I think the ultimate development of industry and commerce in this country is of far greater importance to me than the quality and price of a particular article at the initial stages. What we pay for the imported article goes to the foreign capitalist and foreign labour, and what we pay for the indigenous article goes to the Indian capitalist and Indian labour. Therefore, Sir, I ask for a radical change in the system of Government purchase.

The Government of India ought to consider themselves to be the custodians of the interests of the large masses of this country. The large masses of this country live on marginal existence and the present policy of the Government has resulted in disturbing the internal balance of economy in this country directly leading to unemployment, poverty and low purchasing power. All these evils can be set right only if the Government of India change their policy and become cent. per cent. swadeshi as I have asked them to do. I have cautiously worded this Resolution. I have not asked the Government to do anything extravagant. I have qualified my Resolution by the words:

"discontinue the use of *bideshi* articles in these offices unless they are such as are not manufactured in India and are *absolutely necessary*".

If they are manufactured in India, then they should buy in India. They should not buy foreign articles if it is not absolutely necessary. After all, the greatest protection to a country's industry and trade is swadeshi. Swadeshi necessarily implies exclusion of foreign articles. It is not a thing unknown to England. England has built up her industries only after practising a rigorous policy of boycott or exclusion. There were laws passed in the 18th Century prohibiting the importation of Indian articles into Britain and also laws to punish people who used Indian articles which were imported into Britain. It is in that way they were able to build up their industry. I am not asking for any such drastic measures to be adopted. I only ask the Government of India to consider themselves the Government of the people of this country and not a foreign Government. Unlike Sir John Strachey who thought that the interests of his countrymen were more paramount, I think that the interests of the people of India must be the most paramount consideration of this Government.

With these words, Sir, I appeal to the Government to accept this Resolution, for any attempt to oppose it will clearly expose their anti-Indian policy. I hope they will not make themselves liable to such an accusation.

THE HONOURABLE MR. M. S. A. HYDARI (Labour Secretary): Sir, I will not presume to follow the Honourable Member into the wider speculative regions over which he has ranged. I will confine myself to the comparatively limited scope of this Resolution. The principles governing the purchase of stationery and articles for office equipment are laid down in rules. These rules enjoin that preference should be given to articles produced in India, subject only to two conditions which any prudent consumer must lay down, namely, that they are of the requisite quality and they are of the requisite price, that is having due regard to economy. It might be argued that though we have laid down these rules, our departments, taking advantage of these two conditions, do not follow them. In reply to the Honourable Mover, I shall give the House a few facts. The Indian Stores Department arrange for the purchase of a comparatively small range of articles of office equipment. They are about 14 items. Out of these, except three, *viz.*, bicycles, clocks and time-pieces, which are not available in India, all the other articles are purchased in India from articles manufactured in India. More than 99 per cent. of the remaining articles obtained are of indigenous make. So much for the purchase of office equipment by the Indian Stores Department. But the biggest purchaser of office equipment is the Controller of Stationery and Printing. What are the facts here? In 1937-38, stationery stores of the value of over Rs. 58 lakhs were bought by the Controller. Out of that, 90 per cent. were of Indian manufacture. Purchases from the Director General of the Indian Stores Department in London have been reduced from Rs. 6.36 lakhs in 1929-30 to Rs. 1.25 lakhs in the current year. These facts show how loyally the Heads of Departments concerned with these purchases are carrying out the intentions of Government. They do more. They actively assist indigenous industries and I will give you a few facts with regard to these. There has been a marked improvement in the quality of paper turned out by Indian mills, and attempts are being made by the Central Stationery Office for the gradual substitution of superior quality imported paper by locally manufactured paper. My Honourable friend made great play with the Order Paper he had in his hands saying that it had been imported from abroad. It is not. This paper (showing the agenda paper of the day) has been manufactured in India. It is not imported. He complained that the Legislative Department had put Bavarian pencils on the table. But I say my Honourable friend the Finance Member elect has got a swadeshi pencil. I have got a swadeshi pencil here (showing a pencil from his pocket), manufactured by a firm in Madras which my Honourable friend mentioned. During 1937-38, we bought something like 9,856 tons of paper for Government use. Contracts for the whole of this quantity were placed in India. Indian manufactured inks are rapidly replacing the more expensive high class foreign inks, which are stocked only in small quantities to meet special requirements. In other articles of office equipment like scissors, chinaware, pen knives, etc., the entire needs of Government are found from articles purchased in India. We do not stop at purchasing Indian manufactured articles. We also give assistance by our purchases to cottage industries. For example, Honourable Members must have noticed our chaprasis using a red cloth. They clean your shoes with it and they tie your files in it. It is the product of cottage industry. Articles like jaconet cloth, cotton twine, hemp twine, cotton thread, stamp pads, wooden inkstands, and stationery cabinets are purchased in India and not from abroad.

The Honourable Member said that even if these Indian-made articles are more expensive, they should not be purchased from abroad but should be purchased in India. Well, we do that, I will give you an instance. Even in

cases where the articles supplied are not quite up to the standard and the prices to be paid are higher, preference is given to Indian stores. A straw board mill, the only mill, in India in 1928 was practically kept alive by Government ordering from it for six years consecutively the major portion of their requirements at prices 55 per cent. above those of the imported variety.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce) : Very wrong.

THE HONOURABLE MR. M. S. A. HYDARI : This mill now supplies straw boards at a rate more in keeping with the price of imported boards while another mill has been set up to meet the demand. Here is an example of definite encouragement even at some initial expense to us. Other industries which have developed as a result of encouragement extended by Government are the manufacture of carbon paper, ribbons, pencils, pen-holders, pen nibs and articles of office furniture. But these articles are almost entirely purchased in India. So that, as regards the policy which the Resolution seeks to impose upon us, we are already and have been for some years past following that policy. And if my Honourable friend will only accept two conditions, which as I have said before any prudent consumer must demand, that is, a condition as regards quality and as regards price, I am prepared on behalf of Government to accept this Resolution. The amendment which I would like to move if I may is as follows :

- (1) After the words " if available in India " in part (i) of the Resolution to insert the words " and of the requisite quality and price ".
- (2) After the words " to discontinue " in part (ii) of the Resolution to insert the words " subject to the above-mentioned considerations ".

THE HONOURABLE MR. G. S. MOTILAL (Bombay : Non-Muhammadan) : I am very glad that the Honourable Member who preceded me has apprised us that the policy of the Government of India is in accord with the spirit of the Resolution moved by the Honourable the Leader of the Congress Party in this House. He wants however to introduce certain qualifications as regards quality and price, but he has himself told us that even when the price of the local article was higher than that of the imported article—

THE HONOURABLE THE PRESIDENT : That is the higher price specially given to support one individual local industry.

THE HONOURABLE MR. G. S. MOTILAL : Exactly, and the policy of purchase was intended to support local industry so that in course of time it may be in a position to compete with foreign industry. That is also the policy of other Governments as will have been seen from the report in Hansard which my Leader has read, and there no question of price or quality is raised. We do not say you must purchase things whatever their quality may be, serviceable or not.

THE HONOURABLE THE PRESIDENT : You do not adopt those conditions in your private or domestic purchases.

THE HONOURABLE MR. G. S. MOTILAL : I do not know, Sir, why we should not adopt it. There are people who do adopt it, at any rate so far as Congress members are concerned, and I know many others who out of their

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love for swadeshi adopt that policy. (*An Honourable Member* : "Glorious") It is glorious, and it is a shame not to follow it. The truth— (*An Honourable Member* : "Truth and non-violence") There are some who are ashamed of non-violence.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Ashamed of non-violence ?

THE HONOURABLE MR. G. S. MOTILAL : Some people are in this House.

THE HONOURABLE THE PRESIDENT : Well, let us stick to the Resolution.

THE HONOURABLE MR. G. S. MOTILAL : However much you may fling at non-violence, I have seen in Europe that the people there appreciate the great value of non-violence. It is easy to kill each other, but I think many of those who know what violence is they at heart detest violence. Because violence is not here near at hand people get up and have a fling at non-violence and truth and laugh at them. Anyhow I want to confine myself to the Resolution. It is only because these interjections are made that one cannot help taking notice of them because they come from an eminent Member of this House.

What I was saying is that if we accept the amendment and restrictions as to quality and price suggested by the Honourable Member for Government, it may so further restrict the scope of the Resolution that in fact the object may be defeated. It is necessary therefore to define in more precise terms those limitations as regards quality and price.

THE HONOURABLE MR. M. S. A. HYDARI : Sir, may I give a few examples. There are certain kinds of drawing paper which we have to get from abroad so far, and there are certain kinds of locks and cabinets which we have to get from abroad. I think the information which I have given to the House is sufficient to indicate that we construe the limitations in a very strict sense.

THE HONOURABLE MR. G. S. MOTILAL : But the Resolution also excepts articles not manufactured in India and which are absolutely necessary. It excludes those things which are absolutely necessary. I am very glad to hear that those restrictions will not be construed very strictly. But after all the Resolution is a recommendation, and if it is the policy of Government to carry this out in the letter and the spirit, it would not make much difference if one word here and another there is added in the Resolution. We appreciate that, but we do require that this policy should be carried out. I am glad that such has been the policy. If those figures had been given in the Government report we would have been better informed. I think Government ought to publish information of that kind. They probably think we know all about it because they know. Their reports are not complete. In this connection, answering one of my questions, Mr. Dow said that for want of space in the *Indian Trade Journal* the exports of textile materials to Burma could not be given. I suppose the Honourable Member knows that the *Indian Trade Journal* contains about 150 to 200 pages, and one more line only is required to furnish that information. But I am glad they are

going to consider it, and I hope that suggestions made by us will be seriously considered. I am glad, Sir, that it is not necessary for us to dwell at length on this question but if all the information had been given in the Government publication, as to what they are doing, what are the things they are purchasing, what is the quantity which is purchased here—

THE HONOURABLE MR. M. S. A. HYDARI : Information is given in a publication which is available to the public. It is entitled the 12 Noon. Report of the Central Stationery Office, Calcutta. The figures which I quoted—Rs. 58 lakhs—are to be found here. There is nothing which I have quoted which is not available in the published documents.

THE HONOURABLE MR. G. S. MOTILAL (picking up a pencil from his table) : This pencil is made in Bavaria. And I am not aware that Bavaria is part of India and until it is part of India, it cannot be regarded as Indian made.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : Probably it is old stock ; we do not want that thrown away.

THE HONOURABLE MR. M. S. A. HYDARI : My Honourable friend (the Honourable Mr. Puckle) has got a pencil made in Madras.

THE HONOURABLE MR. G. S. MOTILAL : We want also to have pencils made in India.

AN HONOURABLE MEMBER : Accept the amended Resolution.

THE HONOURABLE MR. G. S. MOTILAL : Whether to accept or not is for my Leader. But I understand the policy of Government is the same ; our policy and Government policy are in accord as regards purchase of Indian articles. Only it has got to be carried out more vigorously than it has been.

THE HONOURABLE THE PRESIDENT : I do not think any further discussion is necessary in view of the definite statement made by the Honourable Member in charge. I shall accept your amendment. It reads :

“ This Council recommends to the Governor General in Council (i) to make it obligatory for the Government offices connected with the Central Government to use only swadeshi articles, if available in India and of the requisite quality and price, for office equipment, and (ii) to discontinue, subject to the above-mentioned considerations, the use of bideshi articles in these offices unless they are such as are not manufactured in India and are absolutely necessary ”.

The Question is that this Resolution be adopted.

THE HONOURABLE MR. HOSSAIN IMAM : May we have a chance to speak on this, Sir ?

THE HONOURABLE THE PRESIDENT : No, I do not think it is necessary.

THE HONOURABLE MR. RAMADAS PANTULU : Sir, I am thankful to the Honourable Mr. Hydari for the information he has furnished to this House. I particularly have benefited a good deal by the information he has given us. But, Sir, while we are thankful to him for the way in which he has dealt with

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the Resolution and for the assurance he has given, speaking for myself I cannot wholly accept for my part the qualifications that he has imposed. That does not mean we will vote against the amended Resolution when put. So far as I am concerned I cannot be a party to any such condition, that the Indian Government and the Indian people will only use Indian goods provided in respect of quality and price they compare equally with foreign goods. That condition is certainly unacceptable as I stand for 100 per cent. swadeshi and I want the Government to be 100 per cent. swadeshi. I want them to use Indian articles though they are not of the same quality and though the price may be somewhat higher, because what is lost in the quality and price is more than compensated for by the development of industry and provision of employment and increase in the purchasing power.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : What about importation of foreigners in Bihar ?

THE HONOURABLE MR. RAMADAS PANTULU : I do not stand for it. I certainly cannot commit myself to the amendment moved by the Honourable Mr. Hydari. Nevertheless I desire to express my thanks to him for his attitude towards my Resolution.

THE HONOURABLE THE PRESIDENT : I will not read the Resolution again. The Question is that this Resolution be adopted.

The Motion was adopted.

RESOLUTION *RE*. APPOINTMENT OF A COMMITTEE FOR UNDERTAKING LEGISLATION IN REGARD TO HINDU MARRIAGES.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, the Resolution that I have the honour to commend to the acceptance of the House runs as follows :

"That this Council recommends to the Governor General in Council to appoint a committee to inquire into and report on the question of the desirability of legislation which would make Hindu marriages performed according to religious rites (a) strictly monogamous, such marriages also being registrable at the option of the parties, and (b) where they have been so registered, dissoluble by courts of law under proper and adequate safeguards."

Sir, the Resolution that I am moving is, as I shall show, a moderate one from the point of view of one who believes that vast changes are necessary in the present constitution of Hindu society. I am not asking the House to commit itself to anything except a committee to consider a question of considerable social importance. I am not asking the House at this stage to commit itself to the principle of monogamy and registration of divorce. As the House is no doubt aware, several Bills are pending in regard to these matters before this House and the other place and co-ordinated effort is necessary with regard to these measures. We need a committee to co-ordinate the efforts of these various pieces of legislation. I am asking the House to take into consideration the change that has taken place in thought in Hindu society in these basic matters and I recommend to the Governor General in Council in this Resolution the appointment of a committee to consider the question of monogamy and divorce. This, surely, Sir, is not a revolutionary proposal. I would like the Government to inquire through the method of a committee

whether Hindu society is ripe for the change which has been suggested in my Resolution. That will be the object of this committee. It is therefore as modest a proposal as any could be.

Perhaps, Sir, you will allow me to explain my Resolution. In the first part of my Resolution I recommend that Hindu marriages should be made strictly monogamous. Hindu marriage is in fact in the vast majority of cases monogamous. Our religious teaching is in favour of monogamy; the highest ideal of a Hindu marriage is a monogamous union. The ideal union for Hindus is represented by Ram and Sita and it was a monogamous union. I do not, Sir, propose to argue the case for monogamy. We cannot have a double sex standard for men and women. Polygamy and harem degrade women and shock the modern conscience. The institution of polygamy lowers the status of Indian civilisation and enables our foreign critics to point the finger of scorn at us. The vast majority of our men, as I say, practise monogamy. Public opinion is strongly in favour of monogamous unions and one rarely comes across a Hindu who has more than one wife. (*An Honourable Member*: "Not rarely".) Well, I mean except in the upper aristocracy or princely order, monogamy is the rule. I hardly know an upper middle class or a lower middle class or a working class man who has more than one wife. (*An Honourable Member*: "Then your experience is very limited".) I have no experience of the Madras Presidency but I have experience of the United Provinces and monogamy is the rule in the United Provinces and not the exception. Why then should the law not recognise an existing fact? Women's organisations are strongly monogamous. Sir, last year, I was in Australia and a gentleman asked me in the most delightful manner imaginable—I do not blame him, he asked it so innocently—he asked me whether the lady who was my wife was the only wife I had, and he subsequently explained to me that he had put that question because he had come across an Indian nobleman with three wives on the Continent. Now, Sir, this sort of thing lowers the status of India in the eyes of the civilised world. One result of the present position is that the Indian marriage is not recognised in England. Hindu law does not recognise the English marriage. The results are disastrous. There have unfortunately been, as a result of this state of the law, cases which have not exactly enhanced India's reputation in the outside world. In the Dominions too, the Indian marriage is not recognised and the Dominions get an excuse for refusing to recognise our union as our union is not strictly according to law a monogamous one. In my view, therefore, a change in the law is essential. The vast majority of the people, Sir, marry in the religious form and therefore the religious marriage should be made monogamous. I know, Sir, that there is this Special Marriage Act and I shall have something to say about it, but the vast majority of our people marry in the religious form and therefore the religious marriage should be made monogamous. It is not enough therefore to say that there is provision for civil marriage. My Resolution, therefore, suggests that when a religious marriage has been registered it should be dissoluble.

THE HONOURABLE THE PRESIDENT: Will you please explain to me that part of your Resolution, which I do not understand. Registrable where?

THE HONOURABLE MR. P. N. SAPRU: I am coming to that, Sir.

Now, Sir, I will explain my Resolution if I may. In the first part, I say that all marriages should be monogamous. In the second part, I do not say that all marriages should be compulsorily registrable. Personally I favour compulsory registration but having regard to the vast illiteracy that prevails

[Mr. P. N. Sapru.]

in this country there may be administrative difficulty in registering all marriages. I have therefore suggested a half-way house. I have therefore suggested optional registration.

THE HONOURABLE THE PRESIDENT : I want to know the machinery by which registration will be effected.

THE HONOURABLE MR. P. N. SAPRU : Well, Sir, there are the municipalities, the district boards, the patwaris, all this machinery can be used for the purpose of registration. The subordinate judiciary—

THE HONOURABLE THE PRESIDENT : And the village people are supposed to go there and get their marriages registered ?

THE HONOURABLE MR. P. N. SAPRU : Well, Sir, the machinery can be revised, and in fact all marriages are not to be registrable under my Resolution. It is optional. It is optional for people who undergo their religious marriage to have their marriages registered or not. It will be said, Sir, that there is a Special Marriage Act and those who wish to have registered marriages can register it under the Act. But the Act, Sir, imposes disabilities upon those who marry under it. Sir, a marriage under the Special Marriage Act has the effect of dissolving the joint family. It severs the connection of the man marrying under the Special Marriage Act from the joint family. The first criticism, therefore, I have against the Special Marriage Act is : Why should dissolution follow automatically ? A Hindu co-parcener has the right of partition and if a Hindu co-parcener objects to the marriage he can enforce his right of partition. A clause like this discourages marriage under the Special Marriage Act. Then, Sir, a man who marries under the Special Marriage Act is subject to the same disabilities with regard to any collateral property as a person to whom the Caste Disabilities Removal Act of 1850 applies. That is to say, a person who marries under the Special Marriage Act cannot succeed to collateral succession. There is a further disqualification from which he suffers if he marries under the Special Marriage Act. He cannot hold any religious office or manage any religious or charitable trust. Why should this be so ? He is a Hindu. He has not to declare that he is not a Hindu. Therefore, why should he not be qualified to hold a religious office or administer a religious trust. Then the Succession Act applies to the property of any person who marries in the civil form. Why should that be so ? No person, Sir, who marries under this Act has any right of adoption. Now, Sir, I do not think my Muhammadan friends will agree with me here, but I do think the institution of adoption is a thoroughly good one. It enables a man to have a future. Why should the right of adoption be denied to anyone who marries under the Special Marriage Act ?

THE HONOURABLE THE PRESIDENT : That is all very well. But what proof will there be that the marriage is monogamous ?

THE HONOURABLE MR. P. N. SAPRU : Sir, what proof of monogamy is there in any country in the world ?

THE HONOURABLE THE PRESIDENT : I particularly ask you because you want to make registration optional.

THE HONOURABLE MR. P. N. SAPRU : The second marriage will be invalid and then, Sir, there is a further clause in the Special Marriage Act and

that is, the father has been given the right to adopt another son, if his son marries under the Special Marriage Act. Now, Sir, all this imposes disabilities on a man who marries under the Special Marriage Act and the result of the present law is to discourage marriages under the Special Marriage Act. Now, Sir, the position, as I understand it, is this. If the religious form follows the registration, the effective marriage is the registered marriage and the religious marriage has no legal significance. If the special marriage follows the religious marriage and the parties belong to the same caste, then I take it the effective marriage would be the religious marriage and therefore the marriage would be indissoluble. That is the law, as I understand it, today, —Mr. Puckle will correct me if I am wrong. I would like all this to change. If a marriage has been registered and the registration follows the religious marriage, then according to the suggestion that I make in the Resolution, the effect of registration would be to make the marriage monogamous. It would be monogamous in any case because I would like all Hindu marriages to be monogamous but the effect of registration would be to make it monogamous and also dissoluble.

THE HONOURABLE MAHARAJADHIRAJA SIR KAMESHWAR SINGH OF DARBHANGA (Bihar : Non-Muhammadan) : Does not the Hindu religion disallow dissolution of marriage ?

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : It is a sacrament.

THE HONOURABLE MR. P. N. SAPRU : I am giving the right to the parties to contract at the time of marriage for divorce. A clause like this would give security to educated girls who often find themselves deserted. There have been cases, and I have known many of them, where young men have deserted their first wives and married other women. The poor Hindu woman has no remedy. Her life thereafter is a tragedy—

THE HONOURABLE THE PRESIDENT : If he gives an undertaking at the time of marriage and if he does not fulfil it—what about that ?

THE HONOURABLE MR. P. N. SAPRU : If the marriage is made monogamous, then of course he will be subject to the law of bigamy. He will incur a penalty.

THE HONOURABLE SIR A. P. PATRO : You are referring to adult marriages where people are in a position to contract and not to child marriages.

THE HONOURABLE MR. P. N. SAPRU : As a matter of fact, I would like no child marriages at all. A change in the law would enable parents of young women to have their interests protected and safeguarded at the time of the marriage.

THE HONOURABLE MR. RAMADAS PANTULU : The Sarda Act is in force.

THE HONOURABLE MR. P. N. SAPRU : It is in force only in name.

THE HONOURABLE THE PRESIDENT : Even the Sarda Act is not a success.

THE HONOURABLE MR. P. N. SAPRU : These changes are necessary in the constitution of this age-old Hindu society and we have to approach these questions from the modern point of view. We cannot approach them from the point of view of people who lived 4,000 years back. They had their problems—

THE HONOURABLE SIR DAVID DEVADOSS : Is society behind you ?

THE HONOURABLE MR. P. N. SAPRU : I think, Sir, I am more in touch with my society than Sir David Devadoss who belongs to another society and who cannot speak with the same authority that I can about my society.

THE HONOURABLE MAHARAJADEHIRAJA SIR KAMESHWAR SINGH OF DARBHANGA : Most of the Indian people will be against you in this matter.

THE HONOURABLE SIR DAVID DEVADOSS : There is the Maharaja Sahab supporting me.

THE HONOURABLE MR. P. N. SAPRU : I recognise that orthodox sentiment, which is represented by my very distinguished and noble friend, the Maharaja of Darbhanga, is generally against divorce. But educated men and educated women are, generally speaking, for it today. Women's organisations have been asking for divorce. Divorce is not unknown to Hindu law. Among the lower castes, divorce is not unknown, and it is often enforced by panchayats. It is only among the higher classes that we have no divorce. Now, Sir, I do not wish to argue the case for divorce at great length. I may say, and I say it quite frankly, that I am a strong believer in it. The problem of mutual adjustment in marriage is becoming increasingly difficult. It will become even more difficult with the advancing education of women. The old ideal of marriage depended on the position of the husband in the home and the readiness of the wife to subordinate her will to his. It is doubtful if the educated women of tomorrow, with a developed personality of her own, will be as ready as her sister was to subordinate herself to the husband.

THE HONOURABLE SIR DAVID DEVADOSS : She won't get a husband ; that is all.

THE HONOURABLE MR. P. N. SAPRU : I think she will get a husband. I think most husbands prefer to take educated wives, but I doubt whether they respect the personality that is in the woman.

THE HONOURABLE THE PRESIDENT : All these points will be considered by the committee.

THE HONOURABLE MR. P. N. SAPRU : I am just mentioning them. Social laws ought to make allowance for these cases of individual hardship. Divorce would not lower but would equalise the standards. At present, unfortunately, we have unequal sex standards for men and women. The wife has no redress against the husband who is unfaithful to her and who ill-treats her. Divorce would enable women to exact a higher ethical standard from man. The remedy of divorce is necessary in the higher interests of society. It is necessary for its spiritual and moral welfare. The relation of husband and wife is an honourable one. Marriage is an essential institution for society. But the system of making people live together when they have ceased to love

each other and when they have ceased to care for each other, is absolutely unwholesome. Marriage ought to be dissoluble when the fundamental purpose of marriage has been frustrated. The present position, if I may say so—I am speaking quite frankly—emphasises the carnal aspect of marriage only. Marriage for the modern man—and I approach this question not from the point of view of a religious Hindu but from the point of view of a modern man—is a union of two souls reverencing the life that is in each other. If I may say so, divorce was not also unknown to the ancient Hindus. There are texts in some of the sacred books in favour of divorce. But I do not base my case upon texts. Hindus—and I claim to be a good Hindu in many ways; philosophically I am a Hindu—Hindus, Sir, believe in a progressive revelation. They believe that the problems of today are different from the problems of old. Hindu society has shown a marvellous capacity for adaptation in the past. Hindu society has never been static. It must show that it is capable of adjusting itself to the changing conditions of the modern world. I can, Sir, if I wanted to employ another kind of argument, cite cases where in order to dissolve a marriage which had become intolerable, men and women have had to resort to ugly devices to get rid of it. They had to change their religion in order to get rid of it. There is another argument that I would advance in favour of divorce. In the disturbed atmosphere of a home it is not possible for children to grow up into healthy children. They are certain to suffer as psychology tells us, from certain complexes in later life, if they are brought up in an unhappy home. The morality of the future will, therefore, have to take into account the findings of physiology, biology and psychology. We cannot allow ourselves to be dictated to by social obscurantists and social reactionaries. We cannot, Sir, stand for progress in political and economic matters and stand for reaction in social matters. I, therefore, Sir, plead for a modern approach to the problem. Whatever my own individual opinions might be, in this Resolution I have shown a spirit of accommodation. My suggestions respect the wishes of those who would like marriage to remain a sacrament and at the same time gives liberty to those who have a different conception of marriage. I am merely in this Resolution asking for a committee. A committee would enable us to give a correct index of opinions. It is true that on the various Bills that are pending here Government has had a large number of opinions. But then, those opinions have not been tested by cross-examination; they have not been subjected to close scrutiny by a committee representative of various interests, and therefore I would suggest that a committee is desirable to consider this question. I have tried to explain my Resolution. I have tried to explain where the law is faulty at present. I have tried to explain what the hardships of those who have to marry under the Special Marriage Act are. I have tried to point out that if parties belong to the same caste and they marry first in the religious form and they then marry under the Special Marriage Act they get no relief, because the effective marriage is the religious marriage and the civil marriage is a thing of no effect. Therefore, I would say that those who wish to maintain the sacramental character of the Hindu marriage—what the term “sacramental character” might mean—need have no fear from the suggestions placed before the House. I have respected their sentiments as far as it was possible to do so. But I have asked for a change in this direction, and I think if a committee is appointed it will be found that there is considerable support for changes in the Hindu marriage law.

With these words, Sir, I commend this Resolution to the acceptance of the House.

THE HONOURABLE SIR RAMUNNI MENON (Nominated Non-Official) : Sir, I recognise that the Honourable the Mover has presented his case with moderation, and if I speak on this subject it is in the hope that I shall have certain difficulties which present themselves to me cleared by him in his reply. The Resolution recommends the appointment of a committee and enunciates the terms of reference for that committee. The objective to be aimed at is monogamy with provision for divorce, and the method for securing it is by a system of voluntary registration.

THE HONOURABLE MR. P. N. SAPRU : May I just explain—monogamy in all cases, divorce where there is registration.

THE HONOURABLE SIR RAMUNNI MENON : I understand that. Well, as far as the objective is concerned, I do not think there will be any difference of opinion. I, at any rate, am entirely at one with him in regard to that matter. My difficulty comes in when I consider the method proposed for achieving that objective. As you yourself seemed to think, Sir, it is not quite clear either from the Resolution or from the Honourable Mover's speech what machinery will be available and adopted for securing this voluntary registration. I should like to expand that point a little further. The idea of a voluntary registration is at first sight very promising and may lead the social reformer to entertain the hope that he has found in it, if not the generally acceptable solution that we are all looking for, at least a sure and safe approach to it. I am afraid a somewhat closer view of the proposal is likely to dispel any such hope. There are two questions which I would like to ask. When is this registration to be effected and at whose instance is it to be effected? As to the time, I assume that it may be simultaneous with the religious marriage or it may be at any time after that. If it is simultaneous, it is quite clear in the first place that those who are already married at the commencement of the Act will not have the benefit of the provisions for divorce. Secondly, it will lead to this undesirable and unwelcome result, that we shall be instituting a system under which two people will be performing a religious ceremony of marriage and at the same time will be performing a separate, positive act which will secure to them the legal means of getting out of wedlock. Now it seems to me that such an arrangement will be regarded as inauspicious and incongruous, and will be quite out of keeping with the atmosphere of joy and happiness that prevails and should prevail on a marriage occasion. Further, the very fact that at the time you are contracting a marriage you are also virtually preparing the way for getting out of it is surely apt to set up psychological disturbances which cannot conduce to a happy married life. Now let me consider the alternative. The registration may take place after the marriage, at any time after the religious ceremony. What guarantee is there that the two parties will agree to get themselves registered when they know that the effect of registration will be to place power in either party for getting a divorce? These difficulties lead to the question: Why have a registration at all? Why not wait for the time when either party really feels the need for divorce and then apply for it? Personally I am not at all enamoured of this idea of voluntary registration. The purpose of it can only be to secure divorce. It cannot be for registering the marriage, because the marriage is already valid as it has been performed according to religious rites. Therefore, I am not satisfied that the system of voluntary registration is likely to serve any useful purpose.

Now, if you take away the idea of voluntary registration, what is left? The only things that are left are monogamy and provision for divorce. Now these are precisely the things that are embodied in the provisions of two Bills

that are, I believe, now pending in the Lower House. So that, without incurring the delay and the expense which the setting up of a committee would undoubtedly entail, we have actually the proposals very near us, and why not wait till those proposals come up to the Council? In all matters relating to social legislation, I think everybody will admit that there are three very important factors to be taken into consideration. The first is public opinion; the second, as we are constituted at present, is the attitude of the Government; and the third is the attitude of the Central Legislature. Now with regard to the attitude of the Government, I do not know what their attitude in this matter is, but we may perhaps assume that their attitude—and it has always been their attitude to social legislation—will be one of benevolent neutrality. Now, I for one, am not disposed to quarrel with that attitude. As has been well said, and said in relation to other Governments in regard to other matters even the Almighty has often to do things in his official capacity which he may not dream of doing as a private individual. I do not think that we can expect the Central Government, at any rate, to depart from the ways of the Almighty. With regard to another factor, namely, the attitude of the Central Legislature, that will be the most decisive factor in these cases. I was hoping that the Honourable the Leader of the Congress Party who sits next to the Honourable Mover would give some indication of the attitude of the Congress Party on matters of this kind. I am convinced that, under the existing political conditions in this country, particularly in view of the present composition of the Central Legislature, unless the Congress Party gives its whole-hearted support to a motion of this kind, there is absolutely no chance of any measure of social reform passing through the Central Legislature. There will soon occur an opportunity which the Congress Party can readily avail itself of; the opportunity is already there in the Lower House and if we know that the Congress Party is supporting the two Bills to which I referred, then the Honourable the Mover's cause is practically secured. If we know that they are not supporting them, that, by their attitude of indifference if not of hostility, they are cold-shouldering the Bills, I do not think we shall be gaining anything by pushing forward with an inquiry of this kind. Our object should rather be to persuade our Congress friends to lend their hearty support to these reform proposals. Thus, while I am at one with the Mover in the objective that he is aiming at, I very much doubt whether we shall be advancing matters very much by appointing a committee.

THE HONOURABLE MR. G. S. MOTILAL (Pombay : Non-Muhammadan) :
 Sir, I desire to move an amendment to this Resolution. The Resolution as amended would read thus :

“That this Council recommends to the Governor General in Council to appoint a committee to inquire into and report on the question of the desirability of legislation which would make Hindu marriages monogamous and provide for registration and dissolution of Hindu marriages by courts of law under prescribed circumstances.”

THE HONOURABLE THE PRESIDENT : Honourable Members, ordinarily in the course of my practice here I allow amendments to unimportant Resolutions; but here is a Resolution which affects not only the Hindu community as it stands but is liable to be extended by the committee to Muhammadan and other communities. I may draw your attention to Standing Order 64 which requires that notice of an amendment should be given two clear days before the amendment is proposed and moved in the House. As this is an important matter, I would like to leave the whole question whether this amendment should be allowed or not to the House itself. I would therefore like to know if the House has any objection to this amendment.

SEVERAL HONOURABLE MEMBERS : No objection.

THE HONOURABLE MR. P. N. SAPRU : In fact I would like to accept the amendment.

THE HONOURABLE KUNWAR HAJI ISMAIL ALI KHAN : I object, Sir.
(Except the Honourable Member nobody had any objection.)

THE HONOURABLE THE PRESIDENT : I will allow the amendment.

THE HONOURABLE MR. G. S. MOTILAL : I am grateful to the House for allowing this amendment to be moved. We must realise that the Honourable the Mover of the Resolution has done a distinct service by bringing up this Resolution for the consideration of the House. Hindu society has for a long time been agitated and has felt the need of reform of its social structure and legislation which would favour such changes. As pointed out by the Honourable the Mover, the Hindu society has from time to time adapted itself to changing conditions and it has lived a healthy life because of such capacity of adaptation. No doubt when a change was attempted to be brought in by outsiders, by persons who were not members of the Hindu community, the measure provoked a certain amount of opposition. That was realised by Government and therefore Government have now more or less definitely declared that it is for the Members, the elected Members, to bring in social legislation and they themselves would not sponsor legislation to effect a change in Hindu law. It is in a way a discreet practice, but I hope they would not oppose this Resolution if not take an initiative in matters of legislation for social reform. I realise that they have their difficulty. They do not feel strong enough in this country to go whole-heartedly in such matters by themselves. Naturally in their own country they do bring in measures of social reform and put them through with more vigour and greater enthusiasm than they do in this country. I can really understand their reluctance to take the same amount of interest because we are likely to misunderstand them, but the Hindu society as I say—and when I say the Hindu society let me not be understood to mean the whole society ; it is the thinking section which always moulds the opinion—

THE HONOURABLE SIR DAVID DEVADOSS : What about the Hindu Mahasabha ? Are they unthinking people ?

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY : The Hindu Mahasabha supported my Polygamous Marriage Restraint Bill.

THE HONOURABLE MR. G. S. MOTILAL : When the thinking section consider that this legislation is necessary that means that you have the support of those who shape society and there are not very strong opposition to your measure. There will be some opposition ; there is no measure on which everyone in a country would be agreed as to its necessity or desirability. What I wish to emphasise is that not only the reformer or the unorthodox but even the orthodox section of the Hindu community feels the need of reform in Hindu law and various attempts that are being made indicate it. In fact, take a State like Baroda. It has changed the Hindu law to some extent ; also Indore ; but Baroda has gone far ahead and in various respects it has effected wholesome changes in the Hindu law. The Resolution of my friend is confined only to the problem of marriage. The committee is to inquire in order to make marriage

monogamous and to provide for registration. We are not dealing with Muslim or Christian marriages. Christians have already got a law which provides for monogamy and also for dissolution of marriages under prescribed circumstances under given conditions. We would certainly wish our Muslim friends to adopt this attitude. I know many enlightened Muslim women would welcome a law which would provide for monogamy, also some of my friends there, but we do not wish to impose our desire or our views on them. We will leave it to them because if it is to be a success they must have their heart in it. When they themselves feel the urge of improving the lot of Muslim women they would be able to get such a law for themselves. I do not at this stage wish that they should, by our legislation, by our suggestions, by measures brought by us, be made to adopt it. We are satisfied that a time will come and come very soon when they will themselves move in the matter—the agonies of their women will make them move.

I am very glad, Sir, that Sir Ramunni Menon who knows Hindu society and comes from what I have sometimes looked upon as a very orthodox part of the country—

THE HONOURABLE SIR RAMUNNI MENON : A most civilised society.

THE HONOURABLE MR. G. S. MOTILAL : I do not deny for a moment that it is civilised. I am proud of our own culture and civilisation, but our culture has always been progressive ; there are some people who are very orthodox in some provinces. My province cannot claim to be as orthodox as yours, but it is because of this dissimilarity that we ought to put our views together, orthodox and those who want to advance, put our minds together and see how far we can go together and bring about the necessary changes. At present, Sir, I just want to deal with one or two aspects of the law of marriage. It is true that under the Special Marriage Act, a Hindu, if he registered his marriage would be confined to monogamous marriage. But very few people can take advantage of it. There are reasons for it. Where, if there are two or three brothers or if a man has his father and a brother living and if he wants to marry under this law, he necessarily severs his connection with the joint family. The law does not give him any choice. Whether he or the other members wish it or not, necessarily the severance is brought about, and this is a disadvantage to him. Natural affection and family ties equally prevent a person from cutting himself off from the family unit. But this law leaves him no other option and therefore this law, the Special Marriage Act, does not really help people in contracting monogamous marriages. The Hindu society, I can say from my own experience of it, is, as a rule, a monogamous society. It observes monogamy. But the Hindu law has given them an unrestricted right to contract any number of marriages, and that right is given only to the man. The inequality is where it is a question of the woman. A man can marry a hundred wives, and that is a state of things which any enlightened society would like to put an end to. What it observes as a moral rule it also wants to be put as a legal restriction. Now law has acquired more importance than conventions which rule society. In the earlier days there were the communities, there were the caste panchayats. Their rule was very effective. It was more rigorous than any rule of the courts could be. And they exercised in many cases a very wholesome influence, and prevented polygamous marriages. But now conditions have changed and are fast changing. The caste cannot function in the same way as it did in the past and now law has to govern society.

Then comes the question of registration. I know the Municipal Act of Bombay provides for the registration of marriages, in what circumstances

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marriages should be registered, will be for the committee to consider. I am told marriages are sometimes denied and even when it comes to a question of succession, they say the marriage is questioned. And it becomes very difficult to prove it. Only the other day my friend said that a marriage was denied by able lawyers, and it had to be proved. Well, certainly registration should not be difficult in big cities and even in small towns. All sorts of registration exist,—registration of property, birth and death. So this registration of marriage can easily be provided for, though it may be difficult to have registration in villages.

Well, Sir, I will now just deal with the question of dissolution. I know the question of dissolution of Hindu marriage is not a simple one. I am one of those who would ask for dissolution but only under very strict conditions. I do not think dissolution is an unmixed blessing. But it may have to be provided and in what circumstances it is to be provided it will be for the committee to decide after taking evidence and sifting it. When the people go before the committee and make their statements, they will have the opportunity of thinking over the matter with a view to examine how far they can sustain their views and of modifying them as far as they feel called upon. I hope, Sir, the House will accept the Resolution as amended.

THE HONOURABLE THE PRESIDENT: Amendment to the original Resolution moved :

"That this Council recommends to the Governor General in Council to appoint a committee to inquire into and report on the question of the desirability of legislation which would make Hindu marriages monogamous and provide for the registration and dissolution of Hindu marriages by courts of law under prescribed circumstances."

The discussion will now take place both on the amendment and the original Resolution.

***THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) : Mr. President, this Resolution affects only the Hindus and therefore it would not have been necessary for me to stand up and say anything in the ordinary course of business. But as some hopes have been expressed by my Honourable colleague Mr. Motilal, I should like to say a few words on the subject. Now marriages can be of two kinds, sacramental and contractual. Among Mussulmans it is more on the contractual than on the sacramental basis. The contractual aspect is more stressed. We have got, Sir, coming before our House a Bill which will deal with the subject-matter of this Resolution on the 13th March. We, Sir, are not prepared to advocate monogamy as we do not require it. Our position is that in India—

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: This relates to Hindus only.

THE HONOURABLE MR. HOSSAIN IMAM: That is what I am saying. But as Mr. Motilal expressed the hope that Mussalmans would come into line, I am telling you that we have got a provision in the Bill which will in effect make marriages monogamous. Secondly, Sir, we are afraid that often legislation which is originally started mainly for Hindus turns out in the end to affect all parts of the country. The same thing happened when the Sarda Bill was in legislation. The original title of the Bill as introduced was the Hindu Marriage

Act. But in the Select Committee it was changed and it became applicable to all people. That happened, Sir, at a not very distant past. It was only about 10 years ago.

THE HONOURABLE MR. G. S. MOTILAL : What did you do—supported or opposed ?

THE HONOURABLE MR. HOSSAIN IMAM : I was not then in the House. In the Resolution as at present framed, the inquiry is restricted to Hindus alone. I have no reason to object to that. But I wish it to be made clear that by no means should it be made applicable to all sections of people. I would rather like a convention to be established that social legislation of a reformist character should originate from the people of the community which is affected and if a majority of the people of that community favour the legislation, other members have a moral obligation to support that resolution. Otherwise, the will of other people who are not to be affected by the legislation should not be used either to throttle the legislation or to give *carte blanche* to the reformers.

THE HONOURABLE THE PRESIDENT : I cannot understand how it can be used without your consent.

THE HONOURABLE MR. HOSSAIN IMAM : That happened in the case of the Sarda Bill. No opinion was taken from the Mussalmans.

THE HONOURABLE MR. G. S. MOTILAL : Mr. Jinnah supported it.

THE HONOURABLE MR. P. N. SAPRU : I think my Honourable friend Mr. Hossain Imam is under a misapprehension. My Resolution only relates to Hindus.

THE HONOURABLE THE PRESIDENT : He says that in a previous case, though the matter was limited to Hindus, it was extended by the committee to Mussalmans. That is his contention.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : The Sarda Act was made a general Act only for the reason that it provided a penalty. It was felt that a penal provision could not be applied only to one section of the Indian population. It had to be of general application. That was the reason why the Mussulmans were brought in there, in spite of their protest. I hope nothing of the kind will be done in this case.

THE HONOURABLE MR. HOSSAIN IMAM : I have nothing further to add to my remarks, Sir.

*THE HONOURABLE MR. SHANTIDAS ASKURAN (Bombay: Non-Muhammadan) : Sir, Resolutions of this nature are introduced very frequently in both Houses. This shows that there is necessity for changes in Hindu law according to the times. If committees are appointed on all Resolutions of this nature, the expenditure and the time will be spent at the cost of the central treasury. May I suggest, if I may, Sir, that the Government should appoint a committee to go into all these questions arising, which will save time and money ? I do not think that my Hindu friends, who are here, will have any objection to having all these questions considered by a committee at a time in general. That will do more good than having individual questions considered.

* Not corrected by the Honourable Member.

THE HONOURABLE MR. F. H. PUCKLE: What sort of a committee ?

THE HONOURABLE MR. SHANTIDAS ASKURAN: To make suggestions for changes in the Hindu law suitable to the needs of the present age. There are one or two proposals already there and surely many more will come from the reformists. That is my suggestion, Sir.

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): Sir, I have some difficulty in dealing with this Resolution. It is rather so confused in its wording. But I think a more comprehensive Bill would meet the demands of the Hindu society at present. The first difficulty I feel is this. The Honourable Mover wants a committee to inquire into and report on the question of the desirability of legislation which would make Hindu marriages monogamous. It has been repeatedly urged by previous speakers that monogamy is the rule of Hindu society and that it is the custom which has been followed from time immemorial. If so, I do not see any purpose in a committee inquiring into this question of making Hindu marriages monogamous. If there is already a custom in Hindu society to that effect, there is no reason for a separate committee to go into it. Secondly, it has been pointed out that marriage should remain a sacrament and at the same time it should be subject to dissolution. This was the statement made by the Honourable the Mover. The sacrament idea, according to Hindu conception, means that it is indissoluble. Divorce is not the rule according to Hindu custom and usage. Therefore, if marriage is still to be regarded as a sacrament, then registration, which would enable dissolution, seems to be inconsistent with the idea of a sacrament. The third difficulty I feel is that throughout the country, in Hindu society, we have predominantly child marriages. Child marriage is the rule. Therefore, if registration is to be effected either after marriage or before marriage, who are the contracting parties to such registration so that it may be binding upon the people ? Has the father and mother of the infant who is married to go and register the marriage ?

THE HONOURABLE THE PRESIDENT: That is what the Honourable Mr. Sapru said.

THE HONOURABLE SIR A. P. PATRO: I am pointing out my difficulties in accepting the Resolution as it is worded. If the wording is different, I can appreciate the position. The educated people may like to have marriage registration and dissolution. But this legislation is not to affect the topmost class of people only. It has to affect the entire population. If it is to affect the entire population, the root cause of the whole discontent among the educated classes is child marriage. Prevent child marriage first, kill that caste system which enables these child marriages, root out that evil first in Hindu society. Then you can have the other reforms following. My fourth difficulty is that I have always felt, and the history of legislation justifies it, that social reform cannot be adequately and effectively carried out by legislation. Take, for instance, the Age of Consent Act. Has it been a successful Act ? I would refer, as my Honourable friend referred, to the Malabar Marriage Act, which was so strenuously fought against in the local Legislature. It is through the efforts of the late Sir Sankaran Nair that we had the Malabar Marriage Act. How many Malabar marriages have been registered under that Act ? Again, we have had this Child Marriage Protection Act. In spite of its scope being extended from time to time, we see that the Child Marriage Restraint Act remains ineffectual. Things are carried on according to the old customs and the child marriage system is still going on. These are only a few of the many examples which show that social reform cannot be effected by legislation. It is

first of all our duty, the duty of our educated people, to create public opinion in favour of reform and then legislation can be brought in and it will be effective and useful.

This Resolution consists of two parts. First, the committee is to inquire into monogamous marriages, and secondly there are to be registered and power be given for dissolution. These two things, according to the present conditions of society are inconsistent and I do not think they could exist together easily. As I say, if our entire social life is to be covered by legislation, first of all early marriages must be prevented and the caste system abolished. When those two things are done such legislation will be possible and practicable. Otherwise it seems to me to be very difficult. If these difficulties are explained to me and if I am convinced, certainly I will vote for the Resolution. But as far as I can see from the speeches I am not able to reconcile the inconsistencies involved in this Resolution. If my friend had brought in a comprehensive legislation to say that divorce is an absolute necessity and therefore it should be provided for, then I could understand and sympathise or support his Motion. There are such Motions pending in the other House and I am sure they will also come up to this House for discussion. I regret I am not able to vote for the Resolution as it is worded.

THE HONOURABLE MR. RAMADAS PANTULU (Madras : Non-Muham-
madan) : Sir Ramunni Menon invited me to state what the attitude of the Congress Party is on this Resolution. He has had many opportunities of noting the attitude of the Congress Party in regard to social legislation in both the Houses. I think we have always been whole-heartedly on the side of progress. Therefore he may rest assured that the Congress Party will support such measures. In fact a member of my Party, Mr. Motilal, has even sought to widen the scope of this Resolution and by his amendment is for going further than the Mover. That shows what our attitude is.

With regard to Sir A. P. Patro's remarks, we are entirely in agreement with him when he says that the evils of the caste system should be done away with. Unfortunately the evil exists not only in certain castes but in all castes. In the Province of Madras, while some of the Brahmans, who are supposed to be orthodox and Shastra-ridden, are giving up child marriage, the non-Brahmans, who are under no such Shastraic compulsion, are imitating the Brahmans. Therefore it is not a question of reform by abolishing caste, because there are abuses in every caste. Unless legislation is brought forward the evil cannot be cured.

With regard to another remark of his that monogamy is the rule and also the custom and why should there be legislation in regard to it. As a matter of fact of late the old orthodox faith in the virtue of monogamy is giving way and there are more cases specially among educated men of polygamous marriages. I would ask my friend to read the interesting speech made by Mrs. Radhabhai Subbarayan in the Legislative Assembly. There she said the advent of educated girls into the matrimonial field has added another cause for polygamous marriages. Some of the educated girls are said to have attracted young men with uneducated old-fashioned wives who are discarded to marry educated women and some of them are doing so.

With regard to the wording of the Resolution, I quite see there are some difficulties like those pointed out by Sir A. P. Patro. But we are not dealing with legislation, only with the appointment of a committee. The committee will deal with these difficulties and frame comprehensive legislation.

[Mr. Ramadas Pantulu.]

With regard to Mr. Shantidas's suggestion of a committee being appointed to deal comprehensively with such legislation, I am also in agreement with him. In fact at one of the sessions of the Indian National Social Congress a very representative committee under the chairmanship of Mr. Jayakar, who has now been translated to the Privy Council, was appointed and that committee had some meetings. I was a member of that committee. But that committee did not finish its labours; it was an unofficial and not a Government committee. It would be perhaps really better if the various communities would agree in appointing an unofficial committee presided over by an eminent jurist and representative of all sections of the Hindu community. The recommendations of such a committee would be of greater value.

My main object in intervening in this debate now is to say that the Congress Party is whole-heartedly in support of this Resolution.

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

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

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Sir, probably no one has yet opposed the Resolution moved by my Honourable friend Mr. Sapru, but I gather from the interruptions during the course of his speech that the orthodox people object to it on two grounds. One is that the proposal of the Honourable Mover would interfere with a religious custom, and the other is that it would be impossible to enforce monogamy even if legislation to that effect were passed. The Sarda Act was referred to in order to show how serious may be the violations of a social law when it does not meet with the approval of the community concerned. Sir, in order to look at the question in a proper perspective I think it is necessary to consider what is the number of the people who would be affected if the suggestion of my Honourable friend were accepted. The Census Reports provide us with very interesting information on this subject. If you take the last Census, that is, the Census of 1931, you find that there are about 83.6 million married females and 84.2 million married males. In other words, the number of married males is greater than that of married women.

THE HONOURABLE SIR RAMUNNI MENON : May I point out that that discrepancy is sufficiently explained in the Report ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : If the Honourable Member will allow me to proceed, he will find that I will not omit to refer to that fact.

If these figures be taken at their face value, it means that there is polyandry rather than polygamy in the country. The Census Commissioner, however, seriously doubts the accuracy of these figures and thinks that marriages contracted in contravention of the Sarda Act were not disclosed. I shall therefore take the figures relating to the previous Census. The Census Commissioner of 1931 says :

“ Polygamy is not widely practised in India among either Muslims or Hindus ”.

And then he goes on to say that it is limited to

“ the very low ratio of eight co-wives to every thousand wives in a population of some three hundred million odd ”.

Now, Sir, the total female population of British India, excluding Burma of course, is 124 millions. Now married women for all communities amount to 493 per thousand women. This shows that the total number of married women is about 61 millions and if there are only eight polygamous marriages is every thousand marriages, then the total number of polygamous marriages in India would amount to about 500,000. My Honourable friend's Resolution relates to the Hindu community only. If we exclude the non-Hindu communities, probably we shall find that we have to deal with no more than about 300,000 cases of polygamy. Surely, if we look at these figures we shall not raise the cry that religion is in danger or that a law prohibiting polygamy cannot be enforced. Polygamy is not the practice of the population at large. Evidently it does not meet with social approval. Consequently it would be much easier to prohibit it than it was to prohibit the celebration of child marriages.

The same remark applies to those who object to my Honourable friend's Resolution on the ground that it would go against the religious customs of the Hindus. Whatever the religious customs of the Hindus might be in theory, the Hindus in practice do not take advantage of the theoretical liberty that they enjoy. Indeed, as everyone conversant with India knows, public opinion is strongly against polygamy. I do not think therefore that any valid objection can be raised to my Honourable friend's Resolution either on the score of religion or on the score of its practicability. I therefore give my support to the principle of his Resolution. I know that various objections can be urged against it as it is worded. They were referred to by my Honourable friend Sir Ramunni Menon, but the amendment that has been put forward by our Honourable friend Mr. Motilal meets to a large extent the objections put forward by Sir Ramunni Menon. Besides what is asked for is not legislation, but an inquiry. The committee which inquires into this question will be able to point out how far a law against polygamy can be enforced and what exceptions, if any, should be made.

My Honourable friend's Resolution, however, does not deal with polygamy alone. It deals with divorce also. Now, we all know, Sir, that opinion on this point is considerably divided in the Hindu community. Probably the majority of the people, who are uneducated, would be against it. But that does not seem to me to be any reason for opposing a divorce law, for the existence of such a statute does not compel married persons to seek divorce. If there are people who think that marriage is a religious sacrament and not a contract, they need not have recourse to the provisions of the divorce law. They can continue to live as they would have done had there been no such law. But, as we all know, there are numbers of cases in which it would be a mercy to both the parties if they were allowed to begin their lives afresh. I have no doubt that this part of the Resolution will be more strongly objected to by the orthodox Hindus than the part relating to polygamy. But in view of the fact that it will be only a permissive and not a compulsory measure, I cannot see how it can be validly objected to. I hope that when the spokesman of the Government rises, whatever objections he may urge he will not oppose the amendment moved by my Honourable friend Mr. Motilal on the ground of its impracticability. The amendment is perfectly practicable and does not seek to compel anybody to violate what he believes to be his religion. I therefore strongly support it, and I hope that the Government also

[Pandit Hirday Nath Kunzru.]

will be able to accord their support to so modest a measure, particularly as they strongly supported a much more radical measure ten years ago, namely, the Sarda Act.

* THE HONOURABLE MR. F. H. PUCKLE (Home Secretary): It would have been a matter, Sir, of some considerable personal relief to me if I had been able to stand up here and say either that the Government would accept this Resolution or that it would maintain what has been called by my Honourable friend from Madras "benevolent neutrality". It seems to be my fate this session to stand up here and oppose attempts to put an end to polygamy. The other day, after speaking against Mr. Roy Chowdhury's Bill, I went home and gave an account of my doings during the day. I may say that I was accused of being, if not in fact at any rate in intent, a polygamist, and it took me some hours before the opposition was, I will not say convinced but at any rate silenced temporarily. I fear that a bad time is coming for me this evening for I must, I am afraid, say that the Government cannot accept this Resolution.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Why?

THE HONOURABLE MR. F. H. PUCKLE: I will tell the Honourable Members. I have listened with very great interest to the speeches that have been made and with a great deal of benefit. But, Sir, I think, with all due deference to the speakers, that a great part of most of the speeches that have been made were irrelevant. We are not here today to discuss the merits or demerits of polygamy or monogamy or whether there should be introduced into the Hindu social code a system of divorce. We are here to discuss whether Government should set up a committee to inquire into the desirability of legislation on these matters. It is this in the Resolution which I have to oppose. I do it for four reasons. The first is that the Resolution is too comprehensive. This committee is going to inquire into monogamy and polygamy, into the registration of marriages, and into divorce. Well, either the first or the last subjects, monogamy *versus* polygamy, or divorce, would be full occupation for a committee. I cannot believe that any committee could tackle the two together. And in any case, it seems to me that to put both these things into the terms of reference of the same committee is attacking the matter in a wrong way. The restraint of polygamy and the grant of facilities for divorce are the two opposite ends of the same subject. If you had adequate divorce facilities, coupled with some law providing for maintenance, I take it that polygamy would within a few years die a natural death except for those who prefer that state of married happiness. There are two schools of thought in this matter as to which is the proper end to begin the attack on polygamy: whether on polygamy itself or whether by means of increased facilities for divorce, and I think it is a mistake to put the two into the terms of reference of the same committee.

Now, my second objection to it is that the committee is not necessary. Its chief duty would be, I imagine, to find out what is the state of public opinion, what is the existing law, and to devise some means of changing both public opinion and the law. Well, Sir, there are five Bills on the subject of either divorce or polygamy in various stages in the two Houses of the Legislature. Two of them at least, I think three, have been circulated for the purpose of eliciting public opinion and we have a very great mass of opinion. I do not say that there is not more opinion to be obtained but I think that

enough opinion has been obtained to enable a comprehensible and defensible Bill to regulate polygamy to be drafted. I do not believe that a committee like this is necessary to obtain these facts. Divorce, as my friend Mr. Kunzru said, is a much more difficult matter, and I dare say we have not got enough information about that, but if I accept part of this Resolution I will have to accept the whole.

The third reason is that a committee is not desirable. Now, speaker
 3-5 P.M. after speaker has pointed out that whatever the Hindu social code may lay down, monogamy is, as a matter of fact, the practice of the Hindu today. I should like to refer Honourable Members to an opinion which was given during the course of circulation of the Honourable Mr. Susil Kumar Roy Chowdhury's Bill. It is on page 35 of the Opinions and it is given by the Commissioner of the Burdwan Division, Bengal. I do not know who the Commissioner of the Burdwan Division is, but I take it that his opinion is based on what he has been told and not on his own personal views. He says, speaking of this Bill :

“ Attempts to force the pace of reforms are likely, if they fail, to lead to a reaction which may be serious ”.

He then goes on to quote the example of the Sarda Bill and to say that it is, he believes, possible that that Bill, instead of performing the purpose for which it was enacted, has in many cases increased the tendency to contract child marriages. It may be so or it may not be so, but I think it quite probable that the formation of a committee of this nature, with such wide terms of reference, would have the effect of consolidating the opposition to reform of the condition in which the Hindu women some times have to live rather than have the effect of dissipating that opposition. I think, at any rate, that that is a possibility which the Honourable the Mover might take very seriously into consideration. At the moment, I do not think that the opposition to polygamy or divorce is vocal, and I can well believe that after a few more years of education, gradually the leaven will begin to work and the opposition will cease to be an active opposition at all. If you start off with committees like this inquiring into this and that, you will concentrate that opposition.

Another reason why I think it is not desirable is that I see no possible hope of the committee reaching decisions sufficiently unanimous to enable legislation to be drafted upon them. If there is one thing clearer than another from the public opinions that we have already received, it is that there are a thousand and one opinions—not so much on monogamy ; to a certain extent on monogamy ; but—on divorce. I really cannot believe it possible that a committee will produce a result on which either private Members or Government could draft a Bill which will command the proper amount of general acceptance. These are my first three reasons for not being able to accept this Resolution.

There is another one, which is a sordid one, but which we cannot altogether ignore. It would have to be a large committee. I take it that the Honourable Mover would wish all shades of Hindu opinion to be represented on it, and certainly, apart from securing representation of Hindu opinion on social matters, we will have to have an expert lawyer or two and a certain number of social workers. I think it will be a very large committee and it will certainly take a very long time to conclude its inquiries. It will affect 250 million people over a sub-continent, and I think it will cost Government a great deal. I do not think that this is the moment to incur extra expenditure unless we are pretty certain that it is going to repay us.

[Mr. F. H. Puckle.]

Those are my reasons, or rather the reasons of Government, for not being able to accept this Resolution. I know it sounds unsympathetic and we shall be called reactionary and retrograde. "Reactionary" now-a-days is a term of abuse which is used for people with whom you do not agree, in whatever direction they are actually progressing. But it must not be taken that because we oppose this Resolution, the Government are not interested in seeing progress made in this matter, or that we never propose to offer any contribution to the proper solution of the problem except mere obstruction. If the Honourable Member will look at the history of social reform in my own country, if he will look at the history of the Factory Acts, of the Married Women's Property Act, of the struggle for women's suffrage and last of all, of the struggle for divorce reform, he will find that the fight went on for years and years before Government—responsible to an electorate, remember—would undertake legislation. As regards divorce reform, I think the Government in the United Kingdom never did undertake legislation. It was left to a private Member, and it was only when Government realised that the electorate was behind it that they gave facilities to Mr. A. P. Herbert to pass his famous Bill. Sir, I think the Honourable Mover may take heart and if he finds it difficult at the moment, he has only got to confront Government with a demand which, though not unanimous, is at any rate general and we may be able to help.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Would the Honourable Member mind answering a question? Am I right in inferring from the first part of his speech that Government would have no objection to accepting this Resolution if it were limited to polygamy? His objection, I take it, is to the inclusion of divorce.

THE HONOURABLE MR. F. H. PUCKLE: I should have to consider that. I can only deal with the Resolution as it stands and as it is amended.

THE HONOURABLE MR. P. N. SAPRU: Mr. President, I am grateful to my friend Mr. Motilal for having suggested an amendment which would improve my Resolution, and I would like, Sir, with your permission, to adopt the amendment as my own. So far as the debate is concerned, I note that no one has seriously questioned the principle of my Resolution. The Honourable Sir Ramunni Menon has indicated, so far as the objective is concerned, my Resolution has his support. He pointed out certain difficulties in the way of giving effect to that objective immediately. Similarly, I find, Sir, that the other speakers who have spoken have also supported the objective of the Resolution. I note, however, that my friend the Honourable Mr. Hossain Imam was opposed even to the objective of the Resolution. I would like to make it clear that the Resolution has nothing to do with the Muslim community. I am not interested in the Muslim community. If Mr. Hossain Imam wishes to have a regular harem he is free to have it! I am not interested in his harem or in the harems of his friends. I only want my Hindu friends not to have any harem at all. Therefore, I had not the Muslim community in mind. So far as the Hindu attitude towards social reform is concerned it is quite different. We believe, as I said before, in a progressive revelation. We are not bound by what our sages said 4,000 years ago. The process of amendment of the Hindu law did not stop three or four thousand years back. Then Mr. Hossain Imam said the Hindu marriage was sacramental and the Muslim

marriage was contractual. Now, I do not exactly understand that word "sacramental", but I recognise perhaps even more than those who talk of marriage as a sacrament that marriage has a spiritual side, that it is not a physical union only. It is a union of the spirit and I prefer the word "spiritual" to the word "sacramental".

Then I shall come to the speech of my friend the Honourable Mr. Puckle. I was rather disappointed with his speech. He gave five reasons why he could not accept the Resolution. The first reason is that the Resolution is too comprehensive. Well, the offer was made to him by the Honourable Mr. Kunzru that we were prepared to have only one part of the question investigated, that which relates to the question of monogamy. Is he prepared to give us a committee for considering that? He is not able to answer that question in the affirmative. But I would say that the Resolution is not too comprehensive. My position is that monogamy and divorce go together. Divorce is the logical concomitant of a monogamous union, and therefore I do not accept the position that the Resolution is too comprehensive. If you are going to have a monogamous union, then you have got to think of the hardships that that union might in individual cases entail and you have therefore to provide for divorce. Divorce is a necessary evil in a monogamous union. In the Christian Marriage Act and the Parsi Marriage Act also, divorce and marriage go together.

Then he said his second ground of opposition was that a committee was not necessary. He said we know what the state of public opinion is. There are five Bills pending on these questions before the Central Legislature. They were circulated for public opinion and public opinion, speaking generally, is against forcing the pace. Now, Sir, my answer to that line of argument is that the opinion which you have obtained through circulation of those Bills has not been tested by cross-examination and the case for divorce and monogamy was never put to the men who oppose it by members of a committee. I might express an opinion against divorce; then if I appear as a witness before a committee I may qualify my statement. I might say I am prepared to consider the case for divorce if certain safeguards are given. It is conceivable I might go before a committee as an extreme opponent and might come back as a qualified supporter of divorce. That is why committees are necessary and that is why I suggest a committee, and I say all those opinions so far received are not worth the paper they are written on. I am told that the bulk of Hindu opinion is in favour of divorce and monogamy.

Now, Sir, the third line of argument which was advanced by my friend opposite was that a committee is not desirable because monogamy is in fact practised. But he just omitted to mention one fact to which I drew special attention in my first speech. Hindu marriage is not recognised by English law; it is not recognised in England; it is not recognised in the Dominions. It is not recognised because it is not a monogamous union. It is in fact a monogamous union, but because theoretically it is not a monogamous union it is not recognised in England and the Dominions and some disastrous results have followed from this lack of recognition. There is the case of Lord Sinha. He cannot sit in the House of Lords because they say—though the matter has not yet been decided—that his father's union was not a monogamous union. The first Lord Sinha would never have dreamt of marrying a second wife, but theoretically he could and therefore his son finds he cannot take his seat in the House of Lords. Therefore, I think there is no substance in the point that a committee is not desirable.

[Mr. P. N. Sapru.]

He said also that the experience of the Sarda Act is against forcing the pace of reform. There is a difference between the Sarda Act and my Resolution, at any rate as regards the first part of my Resolution relating to monogamy. Hindu feeling is entirely in favour of monogamy and it will not be difficult to enforce the Act. There is that difference between the Sarda Act and my Resolution. It was very well pointed out by Mr. Kunzru. He went into some figures and therefore I will use the arguments which he used by way of answer to my friend opposite.

Then my friend over there said that if you appoint a committee there is no certainty that the committee will reach unanimous decisions. Well, that is an argument for appointing no committee at all for any question. Why appoint a Sandhurst Committee? Do you expect unanimity on the Sandhurst Committee? Why appoint any committee at all? You appoint a committee not that there might be a unanimous report but because there might be a close examination of a question. You will probably have dissenting minutes. Now I will just ask my friend this question. Did the Divorce Law Commission achieve unanimity? There was no unanimity in the Divorce Law Commission. There were two reports, a minority and a majority report.

THE HONOURABLE MR. F. H. PUCKLE: Government did nothing on it.

THE HONOURABLE MR. P. N. SAPRU: I am coming to that. Of course the Herbert Bill has been passed. I do not mind saying that I am a great believer in that Act. But Government did appoint a Divorce Law Commission and that Commission was not unanimous. Well, probably this committee would not be unanimous. It might have reached a certain measure of unanimity; it might not have reached any measure of unanimity. But we must not prejudice the issue.

Then the last argument that was used by my friend was that in order that all shades of public opinion might be represented the committee would have to be a large one and that a good deal of money would have to be spent upon it. You can always find money if you believe in the object. The fact of the matter is that you do not believe in the object and therefore you put forward this excuse about money. After all, Government appointed an Age of Consent Committee some years back; that was a large committee. The Age of Consent Committee was able to achieve a great deal of unanimity and as a result of that committee we had a certain piece of legislation. That may have worked well or that may not have worked well; but there you find that even on controversial matters it was possible for people of different shades of opinion when they sit together to arrive at some sort of agreement.

Then the last argument that was used by my Honourable friend opposite was "Look at the history of social legislation in England. Social legislation in England has been very slow; the Married Women's Property Act was passed only in 1882. The last Divorce Act was passed a short time back; women's franchise was not granted until after the close of the war and you want to hasten the pace of social reform here". But we must profit by the experience of other countries. We must not go through all the painful experiences through which England has gone or other countries have gone through and therefore we want a more rapid development in this country. Of course those of us who are interested in social reform are not going to give up this question. We have been trying to educate public opinion on these questions

We believe that the Hindu marriage will be a purer marriage if it is a monogamous union. We believe that the Hindu marriage will be a better marriage if it recognises divorce and we shall carry on the fight for monogamy and divorce with or without the benevolent neutrality of the Government represented by my friend over there.

THE HONOURABLE THE PRESIDENT : I shall put the amendment to the vote of the Council. The question is :

"That this Council recommends to the Governor General in Council to appoint a committee to inquire into and report on the question of the desirability of legislation which would make Hindu marriages monogamous and provide for registration and dissolution of Hindu marriages by Courts of law under prescribed circumstances."

The Motion was negatived.

CIVIL PROCEDURE AMENDMENT BILL.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY (West Bengal : Non-Muhammadan) : Sir, I move :

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, be circulated for the purpose of eliciting opinion thereon."

My intention is that the opinion of the Honourable Judges and the Bar generally is to be taken. The object of the Bill is to make certain orders passed by a single Judge of a High Court appealable.

With these words, Sir, I move.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official) : Sir, I am afraid I must oppose this Motion. The object of the Bill is thus stated by the Honourable the Mover :

"Whereas doubts, difficulties and confusion have arisen relating to the maintainability of an appeal from an 'Order' under the Letters Patent of the various High Courts in India, on account of numerous apparently conflicting decisions"

"The word 'Judgment' used in the Letters Patent of the High Courts is responsible for such conflicting decisions."

Sir, I submit that there is no justification whatever for this rather alarming statement of the existing position. As a matter of fact, there is a very large measure of unanimity as to the interpretation of the word "Judgment" as used in the Letters Patent. As the late Sir Dinshah Mulla has pointed out in his Commentary on Civil Procedure Code :

"The leading case on the subject is that of *The Justices of the Peace for Calcutta vs. The Oriental Gas Co.* decided by the High Court of Calcutta so far back as 1872. In that case Couch, C. J. said : 'We think "judgment" in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined.' This definition is now of some antiquity, and is rapidly becoming, if it has not already become, almost classical."

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY : What about the judgment of Mr. Justice Page of Rangoon ?

THE HONOURABLE MR. SHAVAX A. LAL : We are not concerned with Rangoon ; Rangoon is no longer a part of British India.

All the other High Courts have taken practically the same view as taken by the Calcutta High Court and this is really a matter on which there is a much larger measure of unanimity than on many other questions under the Civil Procedure Code. That being so, there is really no necessity for the Bill. If this Bill were to become law, I am sure it would lead to greater doubts, difficulties and confusion than may be existing at the moment. I will only refer to one aspect of this matter. The proposed addition to section 104 says :

“ an order affecting, determining or concluding any right or liability of any of the parties to the suit including their representatives in interest ”.

The author of this Bill wants that such an order should be made appealable. But if Honourable Members will refer to the definition of decrees given in section 2 of the Civil Procedure Code they will find that most if not all such orders will be decrees and as such there will be a right of appeal from such orders because they finally determine a point in dispute, and as Honourable Members are aware, in fact two appeals are already provided for against decrees ; and by adding this clause to section 104 there will be a further appeal from that order under section 104. This will surely lead to confusion instead of removing the existing confusion. That is my real objection to the Bill.

I must concede that there is a section of litigious public—and not a very negligible section—which is bound to welcome this Bill. I am referring to that type of litigant who has no case on merits and whose only hope lies in delaying the proceeding as much as possible so that he might succeed in coercing the opposite party into some sort of compromise. That type of litigant is bound to welcome this Bill because his favourite tactics are to prefer appeals from interlocutory orders so that the proceedings are naturally delayed ; and section 104 is the only section which provides for appeals against interlocutory orders. Any extension of section 104 will give him more weapons wherewith to defeat and delay justice. That being the position, Sir, I am sure Honourable Members would not like a measure of this kind and I concede that even the author of the Bill might not have appreciated all these results which are bound to follow if this Bill were to become law. And perhaps my Honourable friend will say that there is no harm in obtaining opinions, but, Sir, this measure is so obviously undesirable that it will be a sheer waste of time, labour and money to circulate it. We certainly owe a duty to Provincial Governments to confine circulation to Bills which really deserve to be circulated.

With these words, Sir, I oppose the Motion.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY : Sir, my Honourable friend says that Rangoon is not a part of India. May I ask, Sir, whether Sir Arnold White, the Chief Justice of Madras, accepted the view of the Calcutta High Court ?

THE HONOURABLE MR. SHAVAX A. LAL : In what connection ?

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY : Whether an order is a judgment ?

THE HONOURABLE MR. SHAVAX A. LAL : There is no dispute about the meaning of “ judgment ”.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY : Sir Arnold White did not agree with the Calcutta view.

THE HONOURABLE MR. SHAVAX A. LAL : But this Bill does not meet the case. It will lead to greater mischief than ever existed or exists at this stage.

THE HONOURABLE THE PRESIDENT : Motion made :

“ That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, be circulated for the purpose of eliciting opinion thereon.”

The Motion was negatived.

PARSI MARRIAGE AND DIVORCE (AMENDMENT) BILL.

THE HONOURABLE MR. M. N. DALAL (Bombay : Non-Muhammadan) : Sir, I move for leave to introduce :

“ A Bill to amend the Parsi Marriage and Divorce Act, 1936.”

Sir, as far back as 74 years an Act was passed called the Parsi Marriage and Divorce Act (XV of 1865). This Act was repealed by the Parsi Marriage and Divorce Act (III of 1936). Section 40 of the existing Act now requires to be altered for the reasons very clearly explained in the Statement of Objects and Reasons of the Bill. I might here inform this Honourable House, Sir, that this amending Bill has been endorsed by the Parsi Panchayat, which is most representative of the community and in whose judgment the community as a whole places great reliance.

With these words, Sir, I move.

The Motion was adopted.

THE HONOURABLE MR. M. N. DALAL : Sir, I introduce the Bill.

SHEBAITY BILL.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY (West Bengal : Non-Muhammadan) : Sir, I move :

“ That the Bill relating to the Shebaity right and the office of Shebaites and the devolution of such right or office in Hindu Debutter Endowments in favour of family deities be circulated for the purpose of eliciting opinion thereon.”

Sir, I do not want to say anything further than what I said last time in the September session and I leave it to the House.

THE HONOURABLE THE PRESIDENT : Honourable Members, on this point I have given my ruling the other day, that you will be at liberty to discuss the question of *ultra vires*, but I would advise you at this stage not to discuss this question. The Motion just now is only for circulation of the Bill. When the Bill comes back and the consideration stage is reached, that will be the proper time for Honourable Members to raise that question. /

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official) : We are going to oppose this Motion, Sir.

THE HONOURABLE MR. F. H. PUCKLE (Home Secretary) : Sir, I have to oppose the Motion for circulation on the very simple ground that it will be waste of time and would bring this Honourable House into disrepute to circulate a Bill which, if it becomes law, we firmly believe would only be enforceable in Delhi, Ajmer-Merwara, Coorg, and—

THE HONOURABLE THE PRESIDENT : I understand you oppose it on the merits ; not on the question of *ultra vires*.

THE HONOURABLE MR. F. H. PUCKLE : I oppose it because it is opposable on the merits because it is *ultra vires*.

Now, Sir, I am in the happy position of having a speech ready-made, but I will not read out the speech which Mr. Thorne made.

THE HONOURABLE THE PRESIDENT : You represent the Government. You are entitled to read anybody's speech or your own.

THE HONOURABLE MR. F. H. PUCKLE : Well, Sir, Mr. Thorne said :

“ I invite the attention of the House to that part of clause 1 which says—it extend to the whole of British India ”.

Now, Sir, I submit as the ground for my opposition to this Motion and the ground on which I ask the House to reject it, that the Bill is not within the competence of this House and the Central Legislature. I do not think that my Honourable friend will deny that the subject-matter of the Bill falls within the expression “ charities and charitable institutions,” “ charitable and religious endowments ”, which is item 34 in List II of Schedule VII of the Government of India Act. That is really the whole of the case. Later on, objection was taken that the Bill was *intra vires* and it did not relate to any particular province. Sub-section (4) of section 100 says :

“ The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a province or any part thereof ”.

And the Honourable Member advanced the extremely ingenious argument that you were not legislating for a province or any part thereof because you were legislating for the whole of India. Well, Sir, while I may admire his ingenuity, I cannot approve it. I do not think any lawyer in this House really approves it either. Now, Sir, the whole content of my opposition to any further action on this Bill is that it is, I submit, unbecoming in us as a House to pursue legislation for which, if it is passed, we shall only be mooked.

Sir, I oppose the Motion.

THE HONOURABLE MR. G. S. MOTILAL (Bombay : Non-Muhammadan) : Sir, I do want to say this to my Honourable friend that this is a Bill which deals with charitable endowments and charitable endowments are under the Government of India Act, 7th Schedule, paragraph 34, entirely a provincial subject. If this House adopted the legislation, that legislation would be inoperative because this House would do so without jurisdiction. I shall therefore request him to consider whether it should not be withdrawn. It is in a way trenching upon the jurisdiction of the Provincial Governments. In Bengal this sort of charity is much more common, and the Bengal Legislature would be the proper forum where such a Bill could be brought more usefully. I shall therefore request my friend to consider this aspect.

THE HONOURABLE MR. SUSIL KUMAR ROY CHOWDHURY : Sir, I would like to withdraw the Bill.

The Bill was, by leave of the Council, withdrawn.

INDIAN SUCCESSION ACT (AMENDMENT) BILL.

THE HONOURABLE MR. M. N. DALAL (Bombay : Non-Muhammadan) : Sir, I move :

" That the Bill to amend the Indian Succession Act, 1925, as respects intestate succession among Parsis, be referred to a Select Committee consisting of the Honourable Sir David Devadoss, the Honourable Rai Bahadur Lala Ram Saran Das, the Honourable Mr. R. H. Parker, the Honourable Mr. S. A. Lal, the Honourable Sir Rahimtoola Chinoy, the Honourable Mr. Ramadas Pantulu, the Honourable Mr. G. S. Motilal, the Honourable Mr. Shantidas Askuran and the Mover with instructions to report on or before the 13th March, 1939, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be three."

Sir, I move for reference to a Select Committee because when an identical Bill was introduced by the late Sir Phiroze Sethna, it was sent for eliciting public opinion and a large volume of opinion has already been received which will be made use of by the Select Committee. I therefore think, Sir, that it is useless to recirculate the Bill for eliciting public opinion.

With these words, Sir, I request the House to accept my Motion.

The Motion was adopted.

STATEMENT OF BUSINESS.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Leader of the House) : Sir, to meet the wishes of the Muslim Members of the House I suggest that there should be no meeting of the House tomorrow before 5-30 P.M. when the General Budget will be presented. The Legislative business fixed for tomorrow will be taken up on Tuesday, the 7th March.

I propose, therefore, that the House be adjourned till 5-30 P.M. tomorrow.

The Council then adjourned till Half Past Five of the Clock on Tuesday, the 28th February, 1939.
