

Monday, 13th March, 1939

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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

~~Unfaded~~ Fumigated 18-12-73



PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI

1939.

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COUNCIL OF STATE.

Monday, 13th March, 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.

AMENDMENT OF THE GOVERNMENT OF INDIA ACT, 1935.

165. THE HONOURABLE MR. RAMADAS PANTULU (on behalf of the Honourable Mr. B. N. Biyani): (a) Has the attention of the Government been drawn to the leading article of the *Hindu* of Madras, dated the 18th February, 1939, regarding "India and Imperial Defence"?

(b) Do His Majesty's Government propose to amend section 126 of the Government of India Act, 1935, so as to empower the Governor General to direct the Provincial Governments to act in a particular way in times of war?

(c) If so, has the Government of India been consulted by His Majesty's Government and what attitude do Government propose to adopt in the matter?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: (a) Yes.

(b) and (c). I lay on the table copy of a question asked in the House of Lords on the 2nd March, 1939 regarding the proposed legislation to amend the Government of India Act, 1935, and of the reply given by the Secretary of State. I have nothing more to add at present to the information contained in the Secretary of State's reply.

HOUSE OF LORDS.

Thursday, 2nd March, 1939.

GOVERNMENT OF INDIA AND GOVERNMENT OF BURMA ACTS.

Lord Snell: My Lords, I beg to ask the noble Marquess, the Secretary of State for India, the Question which stands on the Paper in my name.

The Question was as follows: To ask whether it is the case that His Majesty's Government contemplate early legislation with the object of amending the Government of India and Government of Burma Acts, 1935, and, if so, whether they can give any indication of the scope and purpose of the contemplated Bill.

The Secretary of State for India (The Marquess of Zetland): My Lords, the reply to the noble Lord's Question is as follows:—It is the case that His Majesty's Government contemplate the introduction at an early date of a Bill to amend the Government of India Act, and they hope to secure its passage before Parliament rises for the summer recess. The object of the Bill is to remedy certain defects which practical experience has disclosed in the working of the Act, the remedying of which is a matter of some urgency. It is not surprising that an enactment of the length and complication of the Government of India Act should, when put to the practical test of administration, be found capable of improvement in a number of respects. But the contents of the proposed Bill have been intentionally

confined to cases in which the Act, if unchanged, will lead to serious practical inconvenience. The amendments proposed in no case raise any new question of principle, or will alter in any material respect what are believed to have been the intentions of Parliament when the Act was passed, but I should perhaps add that the proposed amendments include one which is designed to remove, in the event of war, serious deficiencies which the preparation of drafts of the emergency legislation which might then be required has disclosed in the powers intended to be made available by section 102 of the Act to the Central Government.

In two instances the amendments proposed affect provisions which appear in the same terms in the Government of Burma Act, and in those instances proposals for amendment of that Act will also be made.

Viscount Samuel : My Lords, I should like to ask the noble Marquess two questions. I gather from what he has said that the Bill will not touch in any important particular the question of the establishment of a Federal Constitution in India, but perhaps in order to prevent misapprehension in India the noble Marquess will say a word on that. The second question I should like to ask is whether we are to understand that the Bill will be introduced in your Lordships' House.

The Marquess of Zetland : My Lords, I think I can assure the noble Viscount that it will not in any way affect the Federal provisions of the Act. With regard to the House in which the Bill will be introduced, I am not at the moment in a position to give the noble Viscount the information for which he asks.

INSTALLATION OF WASH BASINS IN QUARTERS ALLOTTED TO MEMBERS OF THE LEGISLATURE.

166. THE HONOURABLE MR. RAMADAS PANTULU : (a) Did the Council of State House Committee recommend the installing of wash basins with running water in the quarters in New Delhi intended for Members ?

(b) If so, what action has been taken on the recommendation ?

(c) If no action has already been taken, will Government state whether they propose to take any action and when ?

THE HONOURABLE MR. M. S. A. HYDARI : (a) Yes.

(b) and (c). The proposal was received only recently and is under consideration.

INSTALLATION OF ELECTRIC CALL BELLS IN QUARTERS ALLOTTED TO MEMBERS OF THE LEGISLATURE.

167. THE HONOURABLE MR. RAMADAS PANTULU : Do Government propose to consider the desirability of installing electric call bells at the entrances of the quarters in New Delhi intended for Members of the Indian Legislature for the convenience of visitors who call on the Members ?

THE HONOURABLE MR. M. S. A. HYDARI : Government will consider the proposal if it is desired by the House Committee.

THE HONOURABLE MR. HOSAIN IMAM : It is the desire, Sir.

AMOUNT OF LOSS INCURRED ON RAILWAYS.

168. THE HONOURABLE MR. M. N. DALAL : Will Government state the exact amount of loss incurred by the Railways from 1st April, 1930 to 31st March, 1939 (actually, or estimated up to date) which has been covered either by--

(a) utilising the Railway Reserve Fund, or

(b) loans from Railway Depreciation Fund, or

(c) suspending the contribution from the Railways to the General Budget ?

THE HONOURABLE SIR GUTHRIE RUSSELL : The amount of loss incurred on railways from the 1st April, 1930 to the 31st March, 1939 and met from the Reserve and the Depreciation Fund is Rs. 40·43 crores and the arrears of contribution to be paid to general revenues for the same period are estimated to be Rs. 34·70 crores.

THE HONOURABLE MR. HOSSAIN IMAM : Will the Honourable Member give separate figures for the Railway Reserve Fund and for the Railway Depreciation Fund ?

THE HONOURABLE SIR GUTHRIE RUSSELL : Speaking from memory; I think the Depreciation Fund was about Rs. 32 crores.

STEPS TAKEN TO RECOVER FROM RAILWAYS ARREARS OF CONTRIBUTION DUE TO GENERAL REVENUES.

169. THE HONOURABLE MR. M. N. DALAL : Will Government state what steps they propose to take for recovering from the Railways the arrears of :

- (a) the contribution due to the general revenues from the Railways from 1st April, 1930 to 31st March, 1939 and
- (b) the loans taken from the Railway Depreciation Fund during the same period, for fulfilling the conditions laid down in the Railway Finance Separation Resolution of 1924 ?

THE HONOURABLE SIR GUTHRIE RUSSELL : With your permission, Sir, I will answer questions Nos. 169 and 170 together.

I cannot at present usefully add anything on these subjects to the concluding remarks of the Honourable the Railway Member in his speech on the debate in another place on the 20th February last on Mr. Satyamurti's cut motion regarding a long-range policy in railway finance.

EXTENSION OF THE PERIOD OF MORATORIUM AS REGARDS CONTRIBUTION FROM RAILWAYS TO GENERAL REVENUES, ETC.

170. THE HONOURABLE MR. M. N. DALAL : Will Government state whether they intend to extend the period of moratorium, as regards the contribution from the Railways to the general revenues and repayment of loans made from the Railway Depreciation Reserve, now ending 31st March, 1940 ? If not, what steps do Government propose to recommend to the Legislature for revising the terms and conditions of the Resolution of September, 1924 under which the Railway Budget was separated from the General Budget of the country ?

(See reply to question No. 169.)

CO-ORDINATION AND CONTROL OF ROAD TRANSPORT SO AS TO ELIMINATE CUT-THROAT COMPETITION.

171. THE HONOURABLE MR. M. N. DALAL : (a) Are Government aware of any attempt being made in any of the provinces to co-ordinate and centralise the road transport within each province, so as to

eliminate cut-throat competition amongst those supplying transport services on the road, and to regulate and conduct the entire business as a provincial public utility concern ?

(b) Do Government propose to recommend to the Provincial Governments, or initiate themselves, any system of co-ordinating and regulating road transport in the country, so as to eliminate cut-throat competition amongst those who supply and operate road transport service and minimise inefficiency as well as the risk of accidents on those services, provide cheap transport and appropriate the surplus of profit from such enterprise for the benefit of the public exchequer ?

THE HONOURABLE MR. S. N. ROY : (a) Government are aware that Provincial Governments are generally anxious to co-ordinate and control road transport with the general object of eliminating cut-throat competition among road transport services. The enactment of the Motor Vehicles Bill, 1939, which comes into force on the 1st July next will greatly strengthen their powers in the matter. Government are not aware of any schemes for the operation of road transport services by Provincial Governments which is presumably what the Honourable Member means when he refers to conducting the business as a public utility concern.

(b) The Honourable Member is referred to the concise statement of policy adopted by the Transport Advisory Council at its first and second meetings, copies of which are in the Library, and to the Motor Vehicles Act, 1939, which was published in the Gazette of India on the 25th February, 1939. As regards the last part of the question, the Act authorises the fixing of minimum fares by Provincial Governments in certain circumstances. Road transport services are not usually run by Provincial Governments and the Honourable Member's references to appropriation of surplus profits is not understood.

ACTION TAKEN ON THE RECOMMENDATIONS OF THE WEDGWOOD COMMITTEE, ETC.

172. THE HONOURABLE MR. M. N. DALAL : (a) Will Government state how far the recommendation of the Pope Committee and those of the Wedgwood Committee in regard to economies in the working of Railways, their rolling stock, permanent way, fuel and staff, have been adopted by the Railway Board, and what are the results or actual savings up to date of such adoption ?

(b) Has the attention of Government been drawn to the possibilities of considerable saving in the cost of haulage, likely to result from the substitution of the present heavy wagons, coaches and locomotives on the Indian Railways, by specially constructed light type wagons, coaches and locomotives, which would reduce the dead weight of trains thus made up by 50 per cent. ? If so, what steps do Government propose to take to introduce such economies on the Indian Railways ?

THE HONOURABLE SIR GUTHRIE RUSSELL : (a) The Honourable Member is referred to the Administration Report for the year 1937-38, paragraph 12, Chapter 1, and to the statement showing action taken on recommendations in the Wedgwood Report, issued in November, 1938. Copies of both these publications are in the Library of the House.

(b) Government are fully aware of the advantages to be gained by reductions in the tare weight of rolling stock. Unless, however, the provision of rolling stock is to be made increasingly dependent on importation progress in this direction must await the availability in India of special materials necessary to effect such reductions. Following the production by Tata Iron and Steel Co. of high tensile steel such steel was introduced in all broad-gauge wagons to provide needed additional strength without increase in weight. It has also been introduced in broad gauge bogie coaching underframes so as to give equal strength with an appreciable reduction in weight. To take advantage of a further more recent development of the Steel Company the construction of experimental all steel coaches which will show an appreciable reduction in weight over those now in use is at present under active consideration. The saving in weight to be obtained by the use of welded construction is also being vigorously pursued and experimental wagons having this form of construction are now nearing completion at the wagon builders' works.

THE HONOURABLE MR. HOSSAIN IMAM : Is it being constructed in the railway workshops or in private workshops ?

THE HONOURABLE SIR GUTHRIE RUSSELL : These wagons have been constructed in private workshops.

THE HONOURABLE MR. HOSSAIN IMAM : What are the things to be imported ?

THE HONOURABLE SIR GUTHRIE RUSSELL : Lighter alloy steel and such like.

NUMBER OF OCCASIONS ON WHICH MAILS CONVEYED BY IMPERIAL AIRWAYS, LTD., HAVE BEEN DELAYED, ETC.

173. **THE HONOURABLE MR. M. N. DALAL :** (a) Will Government lay on the table of the House a statement showing the number and particulars of the occasions on which the foreign mails in India, conveyed by the Imperial Airways, Ltd., have been behind their schedule timings since the commencement of the all-up airmail service to British Empire countries ?

(b) What steps have Government taken to obtain compensation for themselves, as well as for the business community in India, on account of loss or damage suffered by them through these delays ?

(c) Is there any provision in the agreement with the Imperial Airways, Ltd., which would provide for such compensation being obtained from the Imperial Airways, Ltd., every time that the mails carried by them are delayed ? Will Government lay a copy of the agreement, if any, on the table of the House ?

(d) What is the exact amount of subsidy paid annually to the Imperial Airways from 1928-29 up to the end of 1938-39, in respect of the conveyance of mails by air to and from India, from and to the United Kingdom, and other British Empire countries ?

(e) What is the amount of subsidies paid to the Indian companies which convey mails by air to the different centres of India, from the landing ports of foreign air mails, namely, Karachi and Calcutta ?

(f) What is the basis on which such subsidies are calculated and granted ?

(g) Have Government received any complaint as to the delays in the delivery of air mail correspondence in India, in respect of internal air mails or foreign air mails ?

THE HONOURABLE MR. S. N. ROY : (a) A statement is laid on the table.

(b) None, but the question of delays that occurred during the Christmas season is under correspondence with His Majesty's Government.

(c) There is no agreement between the Government of India and Imperial Airways, but in the agreement between His Majesty's Government and that company for the operation of the Empire Air Mail Scheme, there is provision for payment of damages by the Company in the event of irregular and unpunctual operation. A copy of the relevant clause of the agreement is laid on the table of the House.

(d) No subsidy was or is being paid by the Government of India to Imperial Airways, Ltd., but annual payments are made to His Majesty's Government in connection with the Empire Air Mail Scheme as explained in the memorandum on the subject to the Standing Finance Committee No. V-18 placed before that body on the 27th February, 1937, to which the Honourable Member is referred.

(e) and (f). The Government of India do not pay any subsidies to the companies operating the feeder services in India, but only make payments for the carriage of mails. The details of the payments will be found in paragraphs 7 and 8 of the memorandum to the Standing Finance Committee referred to in the reply to part (d).

(g) Government have received complaints in connection with the delay in the arrival of the eastbound air mails at Karachi during the Christmas season, 1938. There have been no complaints regarding internal air mails.

THE HONOURABLE MR. N. K. DAS : With regard to (c), the Honourable Member stated that there is an agreement between the Imperial Airways and His Majesty's Government. May I know what is the time limit of that agreement ?

THE HONOURABLE MR. S. N. ROY : Speaking from memory, 15 years from the commencement of the operation of the Empire Air Mail Scheme, and that commenced last year in July, I think.

THE HONOURABLE MR. M. N. DALAL : With reference to (g), are Government aware that air mail letters from Bombay to Delhi and *vice versa* sometimes reach us later than the ordinary railway mail letters ?

THE HONOURABLE MR. S. N. ROY : I regret to say that some instances of that kind have occurred and they have come to the notice of Government. That is a matter which is under correspondence with His Majesty's Government.

Statement showing delays in arrival at Karachi of eastbound mail carrying aircraft of Imperial Airways and Indian Trans-Continental Airways, Ltd., since the beginning of the Empire Air Mail Scheme up to the end of January, 1939.

Arrival at Karachi.

Month.	Scheduled.	Punctual.	Late by	No.	Remarks.
1938.					
March . . .	18	17	1 day	one.	
April . . .	18	14	1 day	three.	
May . . .	19	14	1 day	three. 2 days one.	
June . . .	16	14	1 day	two.	
July . . .	18	17	1 day	one.	
August . . .	23*	18	1 day	five .	* 5 duplicate arrivals.
September . . .	20†	8	1 day	eight . 2 days three. 3 days one.	† 7 duplicate arrivals.
October . . .	23‡	14	1 day	seven 2 days one. 3 days one.	‡ 10 duplicate arrivals.
November . . .	23	15§	1 day	five 2 days two.	§ 12 extra services arrived. One service (28/11) cancelled due to accident.
December . . .	31	14	1 day	nine . 2 days four. 3 days one. 7 days one. 10 days one.	Special Christmas schedule. 31 services of which one was cancelled. Two of the late arrivals arrived in January, 1939.
1939					
January . . .	23¶	10	1 day	nine . 2 days four.	¶ 7 duplicate arrivals.

Extract from an agreement made on the ninth June 1937 between His Majesty's Government and the Imperial Airways, Limited.

* * * * *

38. Provisions in event of Company failing to carry mails in accordance with this Agreement.—(1) On each occasion when (the Company not being excused under clause 13 from the performance of their obligations under this Agreement) suitable aircraft shall fail to start from the terminal point of and proceed on any voyage provided for by clause 2 at the time specified in the time-tables referred to in clause 4 the Company shall (if required so to do) pay to the Postmaster-General a sum of fifty pounds for every successive complete period of twenty-four hours after the appointed time that shall elapse before the aircraft shall actually proceed on its voyage in pursuance of this Agreement.

(2) On each occasion when (the Company not being excused as aforesaid) the aircraft having started on a voyage provided for by clause 2 shall fail to convey the contract mails to and deliver them at the end of that voyage at the time specified for arrival there in the said time-tables the Company shall (if required so to do) pay to the Postmaster-General (in addition to any sum payable under the last preceding sub-clause) the sum

of fifty pounds for every complete period of twenty-four hours between the due and actual times of arrival.

(3) On each occasion when (the Company not being excused as aforesaid) the aircraft having started on a voyage provided for by clause 2 shall fail to convey the contract mails to and deliver them at Calcutta (when an intermediate point) or at Kisumu (when an intermediate point) at the time specified for arrival there in the said time-tables the Company shall (if required so to do) pay to the Postmaster-General (in addition to any sum payable under the two last preceding sub-clauses) the sum of fifty pounds for every complete period of twenty-four hours between the due date and actual times of arrival at Calcutta or Kisumu as the case may be.

(4) On each occasion when (the Company not being excused as aforesaid) the aircraft making the voyage from Kisumu to Nairobi or from Boira to Salisbury Blantyre and Lusaka in performance of the said auxiliary services shall fail to collect the contract mails at Kisumu and proceed for Nairobi or to collect the contract mails at Boira and proceed for Salisbury Blantyre and Lusaka within a reasonable time (not exceeding twenty-four hours) of the delivery of the contract mails at Kisumu or Boira (as the case may be) by the aircraft which conveyed the said contract mails in performance of the said services the Company shall (if required so to do) pay to the Postmaster-General the sum of twenty pounds.

(5) On each occasion when (the Company not being excused as aforesaid) the aircraft making the voyage from Nairobi to Kisumu or from Lusaka Blantyre or Salisbury to Boira in performance of the said auxiliary services shall fail to convey and deliver the contract mails at Kisumu or Boira as the case may be so as to connect with the said services as provided in clause 12(1) (b) the Company shall (if required so to do) pay to the Postmaster-General the sum of twenty pounds.

(6) Provided always that no such payment as mentioned in the last five preceding sub-clauses shall be required if the Company shall prove to the satisfaction of the Postmaster-General that the default in question arose wholly or mainly from any cause or causes beyond the control of the Company. And provided also that the aggregate amount payable under the first three sub-clauses of this clause in relation to any one voyage shall not exceed four hundred and fifty pounds.

(7) Any and each of the several sums of money in this clause stipulated to be paid by the Company to the Postmaster-General in the events aforesaid shall be due and payable as ascertained or liquidated damages and not by way of penalty and (except as aforesaid) from whatever cause or causes the default may have arisen and although no loss can be shown to have been sustained by reason of the default in question and every such sum shall at the discretion of the Postmaster-General be either deducted by him from any moneys then payable or which may thereafter become payable to the Company under this Part of this Agreement or be recovered as a debt to His Majesty with full costs by suit.

(8) The payment of or liability to pay any sum mentioned in this clause shall not in any way prejudice any right of the Secretary of State or the Postmaster-General to determine this Agreement under clause 54 hereof.

(9) Each period of transit shall include the time covered by stoppages of the aircraft on its voyage. The times of commencement and completion of each period of transit shall be ascertained and recorded and all calculations in connection therewith shall be made by officers or agents of the Postmaster-General in pursuance of arrangements to be made from time to time by them for the purpose and the decision of the Postmaster-General as to all questions in relation to periods of transit or the payment or deduction of any sums under this clause shall be final and conclusive.

* * * * *

NUMBER OF OFFICERS IN THE PUBLIC SERVICES, ETC., ETC.

174. THE HONOURABLE MR. M. N. DALAL: Will Government state the total number of superior officers in the Public Services of the Crown in India on the 1st of January 1939, their aggregate salary bill in 1937-38, their travelling, personal and other allowances in 1937-38, pension charges on account of the same, distinguishing between Indian and non-Indian members of such services, in the following services, viz.:—

- (i) The Indian Civil Service.
- (ii) The Indian Army Service.

- (iii) The Indian Air Force.
- (iv) The Indian Navy.
- (v) The Indian Police Service.
- (vi) The Indian Service of Engineers.
- (vii) The Indian Educational Service.
- (viii) The Indian Medical Service.
- (ix) The Indian Agricultural Service.
- (x) The Indian Veterinary Service.
- (xi) The Indian Accounts Department.
- (xii) The Indian Finance Department (including Customs, Salt, Excise and other Departments of Revenue).
- (xiii) The Indian Judicial Services (including the Judges of the High Court, Advocates-General, and other Law Officers, Government Pleaders and Solicitors, Public Prosecutors, etc.).
- (xiv) The Indian Forest Service.
- (xv) The Indian Trade Commissioners.
- (xvi) The Indian Posts and Telegraphs.

THE HONOURABLE MR. A. J. RAISMAN : With your permission, Sir, I will answer questions Nos. 174 and 176 together.

Most of the information asked for is not readily available and cannot be collected without expense and labour which would not be commensurate with the results obtained. I may, however, refer the Honourable Member to—

- (1) the various Provincial Civil Lists which give the strength, rates of pay and distribution of services under the Provincial Governments ;
- (2) Superior Civil Services Rules which give the rates of pay and the strength of the All-India Services ; and
- (3) Pay and Cadre Schedules which give the rates of pay and strength of the Central Services.

Copies of these publications are available in the Library of the House.

NUMBER OF OFFICERS IN THOSE SERVICES, RECRUITMENT TO WHICH IS MADE EITHER BY HIS MAJESTY THE KING OR BY THE SECRETARY OF STATE.

175. THE HONOURABLE MR. M. N. DALAL : Will Government state how many of the officers in the Services of or under the Crown in India, to which appointments are made by His Majesty the King on the advice of the Secretary of State, or of the Governor General, or of the Governor General in Council ; or by the Secretary of State, were serving in the several provinces, and how many under the Government of India on the 1st of January, 1939, mentioning the strength of such personnel in each province or department of the Government of India.

THE HONOURABLE MR. F. H. PUCKLE : The information is not readily available in a consolidated form. I would refer the Honourable Member to the *Army List* and the *Combined Civil List*. Both of these publications are in the Library of the House.

NUMBER OF OFFICERS IN THE CIVIL AND MILITARY SERVICES, ETC.

176. THE HONOURABLE MR. M. N. DALAL : Will Government state :

(a) What is the total strength of the Gazetted Officers in the Civil or Military services of or under the Crown in India (i) in the various provinces, (ii) in the several departments under the Government of India, and (iii) the aggregate of their salary bill, leave allowances, and other travelling allowances ?

(b) What is the total strength of the subordinate and menial staff and establishment in the several departments under the Government of India, and the aggregate value of the salary bill, leave and travelling allowances of such staff and establishment ?

(See reply to question No. 174.)

INDIAN SUCCESSION (AMENDMENT) BILL.

THE HONOURABLE MR. M. N. DALAL (Bombay : Non-Muhammadan) : Sir, I beg to present the Report of the Select Committee on the Bill to amend the Indian Succession Act, 1925, as respects intestate succession amongst Parsis.

RESOLUTION *RE* PROHIBITION OF THE SALE OF ALCOHOLIC LIQUORS IN RAILWAY REFRESHMENT ROOMS.

THE HONOURABLE MR. RAMADAS PANTULU (Madras : Non-Muhammadan) : Sir, I beg to move the Resolution which stands in my name and which runs as follows :

“ That this Council recommends to the Governor General in Council that the sale of alcoholic liquors in the refreshment rooms situated in the railway stations to the public be prohibited and that no such liquors be supplied at such refreshment rooms, except to those who hold a licence or permit issued by a prescribed authority authorising the person holding the licence to consume or possess for personal consumption such liquors.”

Sir, it is with some diffidence that I rise to propose this Resolution, because very powerful interests are against me. This Resolution involves four different departments of the Government of India, Excise, the Finance, Commerce and Railways. The scope of the Resolution is very limited. Primarily it applies only to refreshment rooms in centrally administered areas and in non-prohibition areas. By non-prohibition areas I mean areas which have not yet been brought by Provincial Governments within the operation of their respective prohibition measures. Where such measures are in operation they have dealt with travellers and with consignments of liquor carried by railways. To give one illustration of the provisions relating to such matters I will only read a short notification of the Government of Madras and I expect that the other provinces have followed more or less the same procedure. In applying section 17 of the Madras Prohibition Act, which gives power to the Local Government to make exemptions, the Government have issued the following notification :

“ It is hereby notified for general information that the exemption provided for in section 17 does not extend to travellers who leave their railway compartment or other conveyance in which they were travelling and occupy a rest house, the railway refreshment room or other private or public lodging or house ”.

The Government have also issued a notification under section 17(a) withdrawing the exemption provided for in respect of liquor other than bottled liquor, and also limiting the quantity of bottled liquor which a *bona fide* traveller may possess while passing through a prohibition area. Therefore I am confining my Resolution practically to the centrally administered areas and to non-prohibition areas.

Nevertheless the Resolution raises the entire question of prohibition. I think it is not necessary for me at this hour of the day to argue that drink is an evil and to cite medical and other opinions in favour of prohibition. That has been done over and over again at various places and there are any number of authoritative text books and publications on the subject. Therefore I shall not attempt to prove to this House that drink even in moderation is a great evil. To people who tell me that they are none the worse for having been moderate drinkers for 25 to 30 years my answer has always been that if they had been teetotalers they would be much better today than what they are. That is my answer to them. That however can only be learned by experience and not by assertions and counter-assertions. I am content to deal with the Resolution on the assumption that the deleterious effects of drink even in moderation cannot be disputed. They may be disputed in this House but I proceed on the assumption that they cannot be disputed. Sir, prohibition is a cherished national ideal so far as India is concerned. I would not go back to the ancient days of Manu and other law-givers, to quote texts to show that drink is abominable and must be totally prohibited. Nor do I wish to go to history to show how both Hindu and Muhammadan sovereigns of old have tried to put down drink by various means. Some of them were enthusiastic prohibitionists. Some of the Muhammadan Emperors like Alauddin Khilji and Tippu Sultan are known to have been total prohibitionists. Alauddin Khilji ordered the destruction of all chinaware and other utensils used for drink and Tippu Sultan is supposed to have ordered the destruction of the palmyra trees from which toddy was made. Jehangir was also said to have been a prohibitionist. (Laughter.) Well, he issued a prohibition edict, while he reserved to himself the right to drink. It does not matter if a sovereign sets a good ideal for his subjects, if he does not himself follow it. It is still good for his subjects.

But, Sir, the point of view from which I wish to deal with this question is the policy of the Government of India in regard to prohibition over a long time. That policy was enunciated many times, but I think the earliest clear enunciation of the Government's policy was in 1906, when the whole question was reviewed, and I shall read a sentence from that pronouncement of the Government of India on their excise policy. They said :

"The Government of India have no desire to interfere with the habits of those who use alcohol in moderation. That is regarded by them as outside the duty of the Government and it is necessary in their opinion to make due provision for the needs of such persons. Their settled policy however is to minimise the temptation to those who do not drink and to discourage excess among those who do, and to the furtherance of this policy all considerations of revenue must be absolutely subordinated".

Sir, this policy of not throwing temptation in the way of those who do not drink and to prevent excess in those who are accustomed to drink in moderation has completely failed. And also the policy that considerations of revenue will be subordinated to the general welfare of the people, absolutely *bona fide* no doubt, has not resulted in any success in practice. The drink revenue has gone on increasing; the number of drinkers has gone on increasing. So this policy has been a wholly and unqualifiedly futile policy. The excise

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policy need not be described in detail. It consisted of measures like the reduction of strength of liquor while enhancing the duty, reduction in the number of shops, closing shops on certain occasions like festivals, elections, restriction of private consumption of liquor, curtailment of hours of sale and various other restrictive measures of that sort. But, Sir, these measures have not produced the result which the Government aimed at. The extreme limit to which the Government were prepared to go was to allow local option. By local option is meant prohibition not by the State but prohibition by the people of a locality, a unit, to whom the freedom is given by Government if they so choose. If people of a certain locality wanted to have prohibition they were allowed to enforce it, though the State itself would not undertake to do it. This has been tried in some areas but it has not succeeded, because prohibition in a small area leaving the surrounding country free to traffic in liquor cannot lead to any results. There was migration to the areas which was outside local option areas; there was smuggling and other malpractices. Therefore local option too has not succeeded. Sir, the Government of India along with their excise policy—to restrict the consumption of liquor—have also taken measures by way of educative propaganda through their Health and other Departments to preach to people the evils of drink. Sir, while the Health and Propaganda Departments have been going on preaching the evils of drink and exhibiting charts and maps to show the effects of drink on the human system, the excise policy has not changed. With regard to the location of shops and the removing of temptation in the way of the people who are addicted to drink, the Excise Department had their eye more on revenue than on the activities of the Health Department which preached against the evil effects of drink. Sir, in my own place, Madras, I live in the midst of a Roman Catholic colony. There are two ancient and big churches there and there is also a very busy market place near by. A liquor shop has been planted some years ago opposite to my house and in the vicinity of these churches. The Roman Catholic priests and the Lord Bishop of Mylapore have joined me in protesting to the Excise Department against the location of that shop there, but all our combined efforts have not succeeded in removing that shop from that place, even today. I am citing this as one of the many instances where the policy of location of shops has been pursued more with an eye to attract as much revenue as possible than to give effect to the cherished desire of the Government to put down the drink evil. So these measures, both educative as well as regulation by rule, have not succeeded so far in putting down the drink evil.

Sir, the people of India had from a very long time the powerful supporting of all the philanthropists both in England and other countries. Sir, you are aware that in 1889 a very lively debate was initiated in the House of Commons with regard to the system of liquor traffic in India and the effects it has on the people of India and in that debate many Members of Parliament took active part and they supported the Indian cause. They said that the Government's policy was not conceived in the interests of the people of India but in the interests of their own finance. Mr. Caine, M.P., who was one of the best supporters of the Indian cause not only in regard to prohibition but also in regard to political advancement is reported to have said as follows on that occasion :

“ The excise laws of India, the best and the worst of them, directly lead to an increase of the facilities for drinking and as a matter of course to an increased consumption of liquor with all its attendant evils ”.

Sir, I can quote other authorities, other social reformers of eminence from various countries, who have supported the Indian cause for total prohibition. I will only give two short quotations, one from Dr. D. Leigh Colvin, the great prohibitionist of America and one from Dr. James Smith. The former said :

“ The evils resulting from the legally protected liquor traffic are of such colossal magnitude that the only proper attitude for organised society or the State towards that traffic is that of opposition or prohibition rather than that of protection ”.

Dr. James Smith said :

“ Liquor traffic is a cancer in society ; it must be eradicated. All attempts to regulate the cancer will not only prove abortive, but will aggravate the evil ”.

So, Sir, without multiplying quotations of eminent authorities I venture to say that the consensus of informed opinion is that the excise policy of the Government of India, both in its regulation side and propaganda and educative side, has been a failure. So long as this policy is not replaced by a direct policy aimed at prohibition there will be no improvement in regard to the drink question in this country. The first obstacle is the policy of the Government of India to which I have referred.

The second obstacle is this. From the very earliest times, the drink revenue has been so worked up into the financial structure of the provinces as to place no alternative between the abandonment of drink revenue and starving education and all other beneficent activities of Provincial Governments. That was the way in which the problem was presented to them. Today the revenue from drink in India excluding import duties on foreign spirits and wines, which is a central source of income, the total income of the provinces from drink is Rs. 15 crores and the amount spent by the provinces on education is Rs. 12 crores. Therefore they are presented with this alternative : If you give up drink revenue, you will have to give up education. There is no other alternative. It is in this way that the problem has been presented to the Provincial Governments. It is against this position that Mahatma Gandhi entered a very vigorous protest in one of his letters to the Viceroy of India. In one of them he said :

“ The ingenuity of the authors of the Reform of 1919 transferred excise revenue to the so-called responsible part of dyarchy so as to throw the burden of prohibition on it and thus from the beginning rendering it powerless for good. If the unhappy minister wipes out this revenue, he must starve education, since in the existing circumstances he has no new source of replacing that revenue ”.

We are happily in a different position today. The transfer of the entire provincial field of administration to the provinces and the allocation of revenues between the centre and the provinces has enabled Provincial Governments now to find alternative sources of revenue and gradually replace this degrading tax from drink which is tainted revenue, by other items of revenue. Therefore, they can have no excuse for not enforcing prohibition which perhaps the previous Provincial Governments had, because they were faced with an alternative which they could not solve. Sir, this question of prohibition has not been suddenly forced upon the people since the Congress Government assumed office. Ever since 1920, when Mahatma Gandhi gave a new orientation to the Congress, he emphasised on prohibition as one of the main planks of the Congress programme. I will not trace the history of that process but I will remind this House that in 1930 when he was carrying on correspondence with Lord Irwin with regard to the constitutional reforms and the attitude to be taken at the Round Table Conference, he stated to the Viceroy 11 points for consideration as items for settlement in connection with the national problem. I may tell

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you, Sir, that if you only care to refer to that correspondence you will see that it places in the very forefront of the 11 items the elimination of drink and the prohibition of intoxicating liquors and drugs. That is, total prohibition of intoxicating liquors, that was the first item in his list of 11 points. That shows what importance he attached to it. When those negotiations failed and he had to launch his fateful civil disobedience and his famous Gandhi march for salt satyagraha, he again wrote to the Viceroy, on the 2nd March, 1930, ten days before he started satyagraha, and he again gave the first place to this prohibition or prevention of the sale of intoxicating liquors. So, Sir, by placing it as the very first item of his national demands, he has made it a first class issue of national importance and Mahatma Gandhi's negotiations in 1930 were afterwards endorsed by the Indian National Congress in 1931. Prohibition of the sale of intoxicating drinks was made a part of the Karachi Congress resolution which laid down the fundamental rights of the people. So, Sir, it is not as if the Congress Government entered on the scheme of prohibition without previous notice. After the Karachi Congress we know what attempts have been made to picket liquor shops and to take every possible step to discourage this evil of drink. And in July, 1937, when the Congress assumed office, they had a further mandate issued by the working committee of the Indian National Congress that prohibition should be taken up in fulfilment of the election pledge. And on the 28th August, 1937, the working committee passed a resolution asking Congress ministries to embark on a scheme of prohibition the least possible delay. Then the question of cost and the question of loss of revenue was prominently brought before the public and in his characteristically brief manner Gandhi said :

"I count loss of this revenue as of no account whatever. Prohibition will remain a far cry if the Congress is to count the cost in a matter of first class national importance".

And he says :

"So far as the consumer is concerned, the removal of this degrading tax will enable the drinker and the taxpayer to earn and spend better".

In that short answer he has enunciated the national policy with regard to prohibition.

So, Sir, in the provinces where the Congress Government is in power prohibition has been introduced. And it will be completed, God willing, in course of time. And even in the provinces where the Congress is not in office, steps are being taken to introduce prohibition. There are indications that in Bengal and in the Punjab also prohibition will sooner or later be introduced. Therefore, Sir, it is unnecessary at this hour to argue at length the benefits of prohibition. I only wish to answer two points which are usually raised. One is that prohibition involves interference with personal liberty to which every citizen is entitled. To drink in moderation is a personal liberty with which the State has no right to interfere. It has been conclusively and effectively answered by the authoritative pronouncements of the Supreme Courts of America. The points were taken up to the highest judicial tribunals of America when prohibition was introduced there and almost every single court before whom the point was raised answered it in favour of the State. They say, the State has got the right to restrain personal liberty on very many matters, especially those involving national interests. In any case, as the American

vested interests were keen on getting a decision in their favour in the American courts, the legal point can be disposed of by referring to the decisions of the eminent judicial tribunals of the country where the point was directly raised and decided.

Sir, the only other objection which is raised generally is that it will be a failure because experience shows that nobody ever succeeded. Take the case of America, for instance, which is pressed upon us incessantly. Where America has failed, India cannot succeed. But, Sir, there is a world of difference between the two countries. In America drink is a social habit. Millions drink there. There is no religious or social ban on drinking in America. Drinking is not looked upon as a social delinquency and an act of which one need be ashamed. The whole thing is very different here. Drink is looked upon as a deviation from standards of morality and as reprehensible according to the pronouncements of ancient law-givers as well as modern leaders in India. I do not think it is necessary to quote any authority in order to support this view. I shall refer my friends to authoritative text books dealing with this question. My friend Sir David Devadoss knows that in the Tamil country *Kural* is supposed to be a very high authority and the author of *Kural* says :

“ Let none drink , but if they desire, let those men drink who care not for the esteem of worthy men ”.

So, it is considered to be an unworthy act. So, Sir, the American example is no use. Moreover, in America prohibition failed, I think, largely due to the ability of the vested interests to fight the law in that country. But in this country there is no organisation to fight the law or to fight prohibition. So the conditions in America are very different from those of India. I do not think the analogy of America applies and there is no reason why we should not succeed in India if America failed.

Sir, before I conclude, I would like to point out that this is not the first time that the question of total prohibition as a principle to be adopted by the Government has been brought before the Indian Legislature. The question was specifically and directly raised in a Resolution moved in the year 1918 just before the introduction of the Montagu-Chelmsford Reforms by one of the Honourable Members of the Imperial Legislative Council of the time, Mr. B. N. Sarma, and his Resolution runs :

“ This Council recommends to the Governor General that the Government will be pleased to accept and declare total prohibition of the use of alcoholic and intoxicating liquors and drugs to be the aim and object of its policy and to so direct its administrative methods as to achieve the end in view ”.

So what it wanted was prohibition and what it further wanted was a change in the policy of the Government of India so as to bring prohibition into effect. Sir, the fate of the Resolution was, as might be expected in those days when the non-official element in the Council was very small, that it was defeated. The voting however is very interesting and I cannot resist the temptation of telling this House how the voting went. Sir, there were 20 Indian non-official Members present at the Council and all the 20 of them without exception voted for the Resolution of Mr. Sarma, and it was only defeated by the Government votes and the European votes. Sir, I will read the names of those Members who voted for the Resolution. They were :

The Honourable Mr. V. Srinivasa Sastri.

The Honourable Mr. R. Ayyangar.

The Honourable Rao Bahadur B. N. Sarma.

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The Honourable Khan Bahadur Mir Asad Ali.
 The Honourable Sir Dinshaw Wacha.
 The Honourable Maharaja Sir M. C. Nandi of Kasimbazar.
 The Honourable Khan Bahadur Nawab Ali Chaudhuri.
 The Honourable Rai Krishna Sahay Bahadur.
 The Honourable Raja of Kania.
 The Honourable Mr. Mazharul Haque.
 The Honourable Khan Bahadur Mian Muhammad Shafi.
 The Honourable Khan Zulfikar Ali Khan.
 The Honourable Captain Ajab Khan.
 The Honourable Mr. G. S. Khaparde.
 The Honourable Mr. K. K. Chanda.
 The Honourable Sir Gangadhar Chitnavis.
 The Honourable Mr. Surendra Nath Banerjea.
 The Honourable Raja of Mahmudabad.
 The Honourable Dr. Tej Bahadur Sapru and
 The Honourable Pandit Madan Mohan Malaviya.

Sir, Indians, Christians, Mussalmans and Parsee, have all voted for this Resolution. Three of these gentlemen, Mr. Sarma, Mr. Shafi and Mr. Sapru, subsequently adorned the treasury benches of the Government of India. Sir, I had some information this morning that my Honourable friend Mr. P. N. Sapru is going to oppose my Resolution. I may remind him that his illustrious father, when he was a non-official Member of the Indian Legislature, supported the Resolution and voted in favour of it. It raised the question of prohibition directly, and I hope he will not depart from the very good example which his father has set in 1918.

THE HONOURABLE THE PRESIDENT: Some of those who voted for that Resolution used to drink all their lives.

THE HONOURABLE MR. RAMADAS PANTULU: Sir, as I said, in these matters of national importance, the lead which they give to the nation is of greater importance to me than their personal life. I would like a man preaching the right thing though he may not be able to practise it. (*An Honourable Member*: "What is the good?") Prohibition is good. What I said about Jehangir applies to these men.

Sir, we cannot look upon this drink revenue with any equanimity, and there is no half-way house between prohibition and freedom to drink as they please. The half-way house has proved on the whole an illusory one. Sir, we believe that prohibition has come to stay and it will succeed. I cannot do better than conclude my speech by quoting the following declaration of Mahatma Gandhi who says:

"God willing, prohibition has come to stay. Whatever other contribution may or may not be made by the Congress, it will go down to history in letters of gold that the Congress pledged itself to prohibition in 1920, and redeemed the pledge at the very first opportunity without counting the cost."

Sir, with these words, I commend my Resolution to the House.

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): Sir, we have listened to a very interesting speech which was thoroughly irrelevant to the Resolution. The Resolution is a limited one, restricted to the sale of liquors in the railway stations, but we have been entertained to a long speech beginning from Cape Comorin and reaching up to the Himalayas, nowhere touching the real events between these two. We have also been reminded of our ancestry, and of the Vedas with quotations from all literature in support of prohibition. It is said that somebody can cite scriptures if it suits his purpose. In Sanskrit, in the Veda, the words "Sura" and "Sura pana" appear. Not merely that. According to some slokas, you should treat the guest even in Asram with Soma juice. The most sacred functions, Yagna and Homam, *i.e.*, sacrificial fires, cannot be performed according to Sutras without intoxicating liquor, then known as the Soma juice to the Devas—gods. Leave that alone. Leave alone the higher classes, the intellectual classes who stand apart in Hindu society and in the Hindu social organisation. We have in India a sect called the Sakeeyas. Their form of worship is dependent on two things, namely, animal food and intoxicating liquors. They have to carry on their orgies by Saktey worship—worship of the Sakti by means of these two. This is also Shastra. This is also a form of Hindu religious worship. Again, if we come down a little lower, we have what is known as the Mariyamman worship, *i.e.*, worship of the minor deities in rural areas. This cannot be carried on, and the devotion will not be perfect unless they offer liquor. Sir, like a clever advocate, one may preach and strengthen his side of the argument without in the least referring to the other side of the question. Even today, in villages, this is in existence in a religious form, in superstitious form, however you and I may condemn it. Therefore, to say wholesale that our Shastra prohibited it, that our ancestors did not have it, and that it is a new innovation introduced by the wretched Imperialist Government for the purpose of taxing the people and thus making them poorer and poorer and therefore it must be condemned, is not only not logic but it is also untrue, because the roots of this system, the roots of this intoxicating drink existed, not in the modern conditions of things, but they go back to the very, very ancient times.

Sir, the policy of the Governments has been minimum consumption and maximum revenue. In other words, to put as many obstacles as possible in the way of people drinking, the removal of drink shops, time limit and other restrictions have been imposed with a view to seeing that freedom to drink does not become license. I do not defend the policy of the Government, but I do say this, that we have to describe what has been in existence truly and honestly. All these restrictions were intended to minimise the drink evil and as far as possible to remove temptation.

But what is the evil of drink? Does it lie in arrack or ganja or toddy? In the refreshment rooms they do not sell ganja or toddy; they sell foreign liquor under a licence. And there are also restrictions in regard to the serving of the liquor in refreshment rooms. They cannot sell it outside. They have to sell it with food, and if they sell it otherwise it is an abuse of the terms of their licence. And while this Resolution relates only to the sale of foreign liquor in refreshment rooms there is a wholesale condemnation of toddy, the mildest drink, the drink which exhilarates and gives real solace and strength to the poor man who drags a cart or drives a plough from morning till evening. That man is helped by a glass of toddy at the end of the day. Why do you people drink coffee three or four times a day? What right have you to do that? Is it not an expenditure of your family income? Are you not shortening

[Sir A. P. Patro.]

the economic position of your families ? Are you not creating all these wretched hotels and coffee shops at every street corner ? Why do you indulge in coffee and tea ? Your ancestors did not take coffee or tea. Your ancestors started the morning with ablutions, and what are your ablutions ? As soon as you get up you must have coffee. They lit and worshipped at a sacrificial fire before going out to their day's work, and what do you do today ? You take a cigar or cigarette immediately after the coffee. That is what you do ; instead of the restrictions imposed as a matter of discipline by the Rishis and holy men you take coffee and cigarettes. How can that be justified ? Because you belong to a political party which has at present captured power you think you can enforce your views on the people. Not only that, what is the effect of what you are doing ? They say, " Oh, the people are depressed and down and therefore we must raise the economic condition of the people ". But what is the economic condition of those who do not drink ? You say there is misery and suffering amongst these people who by tradition and custom are addicted to drink, but look at the condition of people who do not drink. There are all classes of people in the rural areas and many of them are not addicted to drink and do not waste money on drink. What is the economic position of those people ? Are they any better in comparison with the classes who do drink ? Therefore this bogey of the economic distress caused by drink does not hold water at all. It is merely a plea for the purpose of enforcing a certain idea which has got into the heads of some in whose hands for the present political power rests, and they are taking advantage of that to oppress the people.

Then again, Sir, this policy of prohibition has led to even greater misery in the rural areas and in the urban areas. The new policy is to tax the rich for the sake of helping the poor. That is the slogan. But the question I would ask is, in the districts where are the rich ? Take the income-tax returns. What do they disclose ? Do they disclose any rich agricultural classes in India ? No, Sir, those returns show that the great bulk of the income-tax comes from the people with modest salaries and a few industrialists. They bear the burdens of it.

Now, I do not want to go into the question of whether prohibition has been a success or failure. In some of the prohibition districts all over provinces I have my own reasons for saying that the first enthusiasm created in those areas is gradually fading away, and it is very problematical whether next year we will hear anything of prohibition in those districts. In one district where prohibition is said to be a grand success, that a revolution has been effected in the condition of the people, that their economic position has been improved and everywhere you now find brass vessels instead of earthenware and debts being discharged. But, Sir, the true picture is coming out gradually, and within a short time perhaps we will see that prohibition even in that district which has been so boosted will end in the misery and ruin of the people through heavy taxation. For the purpose of feeding this giant of prohibition, what is being done ? Seven new taxes are now imposed upon the people in the Madras Presidency and other provinces for the purpose of feeding this prohibition. I know that the Finance Department is very solicitous to helping the Provincial Governments. They want to be sure that the Provincial Governments should not fail on the ground of want of assistance from the centre in the way of finance, on whatever other grounds they may fail. In regard to prohibition however I do say that it is a wilful throwing away of revenue and

it is being done without any discrimination between harmless drinks and deleterious drinks and without any discrimination also between areas where the drink evil is pronounced and where it is not. It is being introduced without discrimination nor examination and analysis of the economic situation. They are rushing through this programme because it has been dictated from the top. The high command, so-called, has dictated this policy to the unfortunate Provincial Ministers and they are carrying it out helplessly like faithful servants. They are faithfully carrying out a policy not of their own but from the high command. These new taxes I will narrate one after another. First is the sale of cloth. Poor merchants have a capital of Rs. 100 or Rs. 200 and have a shop. Unless the man sells khaddar cloth, he will have to take out a licence costing eight annas, Rs. 2, Rs. 3, or Rs. 4. He will have to take out a licence to sell cloth other than khaddar. And how does the khaddar price

12 Noon. compare to other mill-made cloth? That they do not see; they do not see the economic effect upon poor people. The poor man is forced to pay more for purchasing khaddar cloth than any other cloth. He has no freedom. We love freedom; we love freedom of action. We want independence and yet what do we want? We want independence not of the people, but of ourselves. We want to dictate and they must obey. That is the type of freedom which we see. Now this khaddar cloth is sold at a higher price than mill-made or foreign cloth. Apart from this tax, we have the turnover tax; we have got the electricity tax; we have got a petrol tax and other taxes that would fall upon ordinary middle class people; they will have to bear these. The rich are not many in the provinces. This crushing taxation is doing the greatest economic harm. We hear from the United Provinces and Bombay and other places that even those people who were most enthusiastic in supporting the Congress to wipe out the drink evil are most bitter in complaining against the taxation proposals of the Congress whom they supported to get into office and power. These are the conditions in regard to prohibition, but no one will oppose prohibition if people adopt it on their own volition with a resolve to improve themselves. But, Sir, this is a great misunderstanding. It is not the case that everyone that goes to a toddy shop or that goes to a refreshment room is drunk. He may take a glass of whisky; he may take a glass of toddy; thereby he does not become a drunkard. As the Honourable the Mover has said, I have also seen that next to my bungalow in Madras—Sir David Devadoss knows it—there are these shops. I see crowds coming in, take a lot of toddy and they drink it and walk away. There is no disturbance nor noise, nothing of the kind; there are no quarrels; they pay their 2 annas or 2½ annas. After working for a whole day when they are tired they have this refreshment. You have got your refreshments and the poor people have got their own refreshments. Why do you say they should be denied this right? You give up your coffee and tea and your *pala-haram*. You give up these. Why should you deprive these men of what they think is absolutely necessary?

THE HONOURABLE THE PRESIDENT: Your time is up. Please bring your remarks to a close.

THE HONOURABLE SIR A. P. PATRO: The question now argued before us is not one relating to the sale of liquor in the railway stations, but we have had arguments over the whole question of prohibition. The Honourable Mover's speech has not convinced me. The question that was argued was quite different from what is on the agenda paper. It is therefore impossible for me to vote for the Resolution.

THE HONOURABLE MR. A. J. RAISMAN (Finance Secretary): Sir, I hope that by rising at this stage I may save the House from being carried into far-off fields which I suggest are not strictly germane to the Resolution which the Honourable Member put down on the paper. I must admit that I speak under a sense of personal grievance. It is heightened by the fact that the first Resolution down on the paper today, which was to have been moved by a Member of the Honourable Mr. Pantulu's Party, required a good deal of preparation, because it dealt with a very large subject and the only intimation I got, after spending much of my week-end reading the debates of the Lower House on this subject, was that at 11 O'Clock the Honourable Member who was to move that Resolution was not in his place. I must say that I feel a certain sense of grievance about that. I think it might have been possible, at any rate for me to have been given a little earlier information if a Resolution of that character was not going to be moved. (Hear, hear.)

But to come to this Resolution, here again a Motion is put down which on the face of it has, I submit, two perfectly clear implications, one that the state of affairs prevailing in railway stations differs from that prevailing in the areas in which those railway stations are situated. It implies quite definitely that on account of something done by the Central Government in regard to a subject within its control, namely, railways, there is some obstruction to the policy of prohibition which is being pursued by certain Provincial Governments and that the Honourable Member wishes to obtain the support of this House in bringing to the notice of the Central Government that that state of affairs should be changed. It implies, secondly, that there is a danger of abuse in that people who might otherwise not be considered to be suitable recipients of licences or permits use the opportunity of these refreshment rooms to obtain liquors which they otherwise would not be able to obtain. It appears that after the Honourable Member put down his Resolution he studied the subject a little more closely and he discovered that in an area in which prohibition is in force it is perfectly within the jurisdiction of the Provincial Government to deal with a railway refreshment room just as well as with any other part of the district in which it is situated, and he realised that there was nothing in the first suggestion which this Resolution implies. He also realised that there was nothing in the second. In other words, that there was no ground whatever for suggesting that because of anything done or not done by the Central Government in railway stations in the provinces there was any obstruction whatever to the provinces pursuing their policy of prohibition. Well, then, what does he do, Sir? He says, "I am not going to talk about railway stations; I am not going to talk about people who hold licences or permits or quotas. I am going to talk about prohibition". Well, Sir, what has prohibition got to do with this Resolution? That is what I want to know. The Honourable Member says, "I am going to talk about centrally administered areas and non-prohibition areas", whatever those may be. By non-prohibition areas I gather he means areas in provinces in which prohibition is not at present in force. In other words, he suggests that whereas a Provincial Government has decided to restrict its prohibition policy to a limited number of districts the Central Government should pioneer prohibition in railway stations in the other districts to which the province has not yet decided to extend its policy. I ask you, Sir, is that a reasonable proposition? My Honourable friend Sir A. P. Patro has pointed out that the class of people who would get their liquor from refreshment rooms are not the class of people in relation to whom the social urge for the improvement of their moral condition has been prominent. They generally belong to the class of ordinary travellers, mostly of European modes of life, who are moderate drinkers and, with respect to what the Honourable Mover has said, who are none the worse

for having an occasional glass of beer or a small whisky and soda. In any case, whatever may be their condition, it cannot be suggested that here is a crying scandal which calls for treatment and that the Central Government should rush in in areas where the Provincial Governments have not yet taken up the policy of prohibition and should see to it that this infamy is stamped out. Having discovered, as I say, Sir, that there was absolutely no basis for the whole of his Resolution, the Honourable Mover wandered away into the general argument about prohibition, and I submit, Sir, that, if the House is to allow itself to be drawn into that field of argument, we shall probably sit here until the end of the day and we shall get no further, we shall come out by the same door as we went in by.

THE HONOURABLE THE PRESIDENT : Oh, but I will see to that.

THE HONOURABLE MR. A. J. RAISMAN : That is, with all respect, Sir, a matter with which the Chair is perfectly competent to deal but the implication of the Honourable Mover's tactics was to draw the House into a very wide question which, I submit, was not borne on the face of his Resolution. I refuse to be drawn into that argument and still more into an even more remote field of argument, namely, the effect of the policy of prohibition on finance, the effect on provincial finances, and the possible effect on Government finances generally. I submit that that is not the point on which I am called upon to say anything in relation to this Resolution. The only matter which could possibly have arisen for consideration which concerns the Central Government on this Resolution would have been the question of prohibition in the centrally administered areas. And there, all I would say is that the position in regard to prohibition is sufficiently experimental for us to wait and see what happens. And in any case, if the question ever arose of applying a policy of prohibition to the centrally administered areas, we would not start with railway refreshment rooms.

In conclusion, Sir, I would again submit that the Honourable Member has not made out any case based on the terms of the Resolution which is before the House.

***THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) :** I have very little to say, Sir, because I have been anticipated by Mr. Raisman. I was going to argue on similar lines to him. I have every sympathy with the prohibition movement but I cannot place the cart before the horse. It is wrong that there should be prohibition in the centrally controlled buildings in provincial areas because the areas are under the provinces, and secondly, Sir, what I wish to stress is that prohibition to be a success requires not only one year's experience but a much longer experience. We have heard, Sir, how the Eighteenth Amendment of the United States Constitution fared in America, and that should be warning enough to us that we must proceed cautiously in this movement. Sir A. P. Patro stressed that these liquors are a necessity of life for the poor labourers. If that proposition is admitted, Sir, there should not be any taxation of the type of excise. But I know that he is an ardent supporter of the former Government's action and therefore he will justify the imposition of excise and probably not regard it as a necessity of life for the labourers. Because he cannot blow hot and cold in the same breath. My Congress friends must also realise that prohibition would involve such a tremendous loss of revenue for the provinces that they

* Not corrected by the Honourable Member.

[Mr. Hossain Imam.]

must proceed cautiously. Especially, Sir, is this the case about the railway stations where the liquor consumed is not utilised by persons who are really poor and deserve our sympathy. It is the rich and you are bleeding them already by many means. Why deprive the Central Government of the revenues which it derives from this source? - My submission, Sir, is that it is a little premature and when this experiment has been found to be successful we would make a direct attack on the Central Government by a Resolution for the introduction of prohibition for the centrally administered areas and not through the back door of the refreshment rooms.

THE HONOURABLE MR. RAMADAS PANTULU : Sir, I made it perfectly clear in my opening remarks that the scope of the Resolution is very limited. I have not been able to follow the criticism of the Honourable Mr. Raisman that my Resolution carries the implication that the Government of India has caused any obstruction to the policy of prohibition of the Provincial Governments. I do not think the Resolution has any such implication. I said that in the centrally administered areas the Government of India should do something and I still feel they are responsible. I do not agree with him that it is not for the Government of India to adopt prohibition in the areas which I have indicated. I think it is their duty. Sir, I am glad that the Honourable Mr. Raisman has not controverted the necessity for prohibition, though he did not express himself definitely one way or the other about it. He said that prohibition is in an experimental stage in the provinces and that the question of introducing it in the centrally administered areas will be considered later. I am content to leave it at that.

Sir, coming to Sir A. P. Patro, I will remind him of two things. Now he speaks eloquently against the very principle of prohibition. I will remind him that till about 1918 or thereabouts he was a member of the Congress Party and a number of Resolutions were passed by the Congress in regard to prohibition. In 1894, when the Congress was presided over by Mr. Alfred Webb, M.P., there was a resolution on prohibition and the President himself gave very strong expression to his belief in prohibition. At that time, Sir A. P. Patro was a member of the Congress and he never differed from the Congress at that time.

THE HONOURABLE THE PRESIDENT : Is anybody bound to differ at a Congress meeting?

THE HONOURABLE MR. RAMADAS PANTULU : If he did not agree, certainly, yes.

Secondly, Sir, there was another occasion for him to have differed. In 1923, the Madras Ministry issued a Government order avowing their faith in prohibition. They actually introduced it fully in one district, the Nilgiris. I have got the whole literature with me. I believe that Sir A. P. Patro was a member of the Madras Ministry at that time.

THE HONOURABLE SIR DAVID DEVADOSS : And he was in charge of Excise.

THE HONOURABLE MR. RAMADAS PANTULU : The attitude then adopted by the Madras Government was not merely for the tightening of the excise policy but for the introduction of prohibition. I do not blame them for having given it up for that is not my point. At that time, the Madras Government, of which Sir A. P. Patro was the Excise Minister, issued a communique

in which they said they were entirely in favour of prohibition and were introducing it and trying it in the district of the Nilgiris. I should produce that document some time later if required.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce) : They tried it and it failed.

THE HONOURABLE MR. RAMADAS PANTULU : It is true that the experiment failed. I do not blame them. If the experiment failed, the reason for it is that at that time, the Provincial Governments had no alternative source of revenue. So, as soon as they started this experiment, they were faced with the difficulty of making up revenue, and except the excise revenue, no other revenue was transferred, very cleverly by the authors of the Montagu-Chelmsford Reforms. They said, "Take the Excise revenue, and do what you like with it to expand all development and nation-building departments". It is one of the cleverest ruses that the Dyarchical Government was ever led into. Therefore, they were bound to fail, and they were wise in giving it up. Without having an alternative source of revenue they could not but do it. Their failure was due to the exigencies of the revenue system and the financial administration, and not to any want of a case for prohibition. They never said they failed because they had no faith in prohibition or because people objected to prohibition. I will therefore remind him of what he himself did as Excise Minister. Then he was all enthusiastic for prohibition, but now he thinks it is a sinister thing.

THE HONOURABLE SIR MUHAMMAD YAKUB : He has become wiser by experience.

THE HONOURABLE MR. RAMADAS PANTULU : I do not want to deal with his aspersions against Congress Governments and his attack on the system of taxation. I shall excuse it, because he is a wounded man and feels deeply aggrieved. If he has sometimes used very unkind language, I shall overlook it.

I would also remind Sir A. P. Patro that the Leader of his Party, Sir Muhammad Usman, who led the Justice Party with distinction for a number of years, who was the Home Member for about 10 years and acted as Governor of Madras on two occasions, supported Mr. Rajagopalachari in his prohibition scheme whole-heartedly and associated himself with the present programme of the Madras Government.

THE HONOURABLE SIR RAMUNNI MENON (Nominated Non-Official) : Not as a Member of the Justice Party.

AN HONOURABLE MEMBER : He ceased to be a member of the Justice Party.

THE HONOURABLE MR. RAMADAS PANTULU : At any rate it shows that some people can change and become wiser while people like Sir A. P. Patro cannot become wiser. That is all that it shows. I must enter a protest against Sir A. P. Patro's remark that prohibition in Salem has failed. I will ask this House to read the debates of the Madras Legislature where the facts have been fully set out by people who are competent to speak with authority and peruse the various reports by Mr. Dixon, the Collector of Salem, on the result of the progress which prohibition is making. I am quite willing to admit that it is

[Mr. Ramadas Pantulu.]

too soon to say that it is a complete success, or that the success will be maintained. At any rate I hope Sir A. P. Patro will prove a false prophet and prohibition will prove a success as time passes.

I have one word to say about the remarks of the Honourable Mr. Hossain Imam, namely, that it is the rich that drink in the railway stations and not the poor. The rich should set the example to the poor people. I feel that the educated and rich men should lead the way, by being torch bearers in the cause of prohibition and the people will follow them. Therefore I feel that prohibition should be introduced sooner among the rich people than among the poor men. The poor man is expected to drink out of ignorance. It is he who is exploited but the rich man has no such excuse. Therefore, I do not regret that my Resolution touches the rich and the educated men primarily and not the poor man.

With these words, Sir, I commend my Resolution to the House.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That this Council recommends to the Governor General in Council that the sale of alcoholic liquors in the refreshment rooms situated in the railway stations to the public be prohibited and that no such liquors be supplied at such refreshment rooms, except to those who hold a licence or permit issued by a prescribed authority authorising the person holding the licence to consume or possess for personal consumption such liquors .”

The Motion was negatived.

RESOLUTION *RE* SUBMISSION BY EMPLOYERS OF PROTECTED INDUSTRIES OF ANNUAL WAGE BILLS.

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

“ That this Council recommends to the Governor General in Council that he may so amend the law as to make it compulsory for employers of protected industries to submit annually a statement of their annual wage bill.”

Sir, the objective of this Resolution is, as I shall show, to reduce friction and dispute in industry because any strike or lock-out leads to stoppage of production which is detrimental to the welfare of the community at large. It also bequeaths a legacy of hatred and promotes class warfare. The collection and compilation of accurate statistical records of wages would be a powerful help in enabling Labour Commissioners to mediate effectively in settling disputes arising out of the wage problem. I need hardly say, Sir, that all the world over the wage question forms the major cause of dispute and in our country it is almost the entire cause of dispute. In 95 per cent. of the cases it is the question of wages which gives rise to disputes.

THE HONOURABLE THE PRESIDENT : But in the case of any dispute, there is nothing to prevent the Labour Commissioner from asking the industry to produce the registers.

THE HONOURABLE MR. P. N. SAPRU : But there is nothing in the law to compel an employer to supply him with this.

THE HONOURABLE THE PRESIDENT : That is not compulsion, but any sane proprietor of any industry will be the first to give the Labour Commissioner this information for his own protection.

THE HONOURABLE MR. P. N. SAPRU : That assumes that all employers are wise and that also assumes that all workers are wise. We live in a world of unwise people and therefore the law has got to take into consideration the unwisdom of most people. Therefore, Sir, the possession of accurate information on this point is essential and imperative. Now if we are to have accurate statistics of wages, it will also be necessary for us to maintain accurate statistics of the cost of living and to have an accurate cost of living index number in different industrial centres. The institution of an index number is a service that can only be performed properly by the Government Statistics Department, because it is the purchasing value of the wages received that can really enable us to say whether they are adequate or not. It is real wages that matter and it is real wages alone that can enable us to find out whether the standard of living of the working classes has improved or not.

Now it is an admitted fact that industrial and market conditions are highly dynamic. They are in a constant state of flux and change. Accordingly wages also must up to a certain point fluctuate with altering economic conditions and circumstances. Therefore rapid and equitable adjustment of wages to the changing circumstances of the market is necessary and inevitable. It is precisely at this point that friction and dislocation of industrial relationships occurs, giving rise to strikes and lock-outs. It is in order to meet such a situation scientifically and sympathetically that I desire to make this suggestion.

Sir, the case for the demand of accurate wage statistics is particularly strong in the case of those industries which are receiving in one shape or other State protection. The consumer, who is after all the ultimate payer, is entitled to have well-sifted and accurately recorded information at his disposal, so that he may be able to find out for himself whether the division of benefit of the measure of protection that the State is giving is fair and just as between the employer and the wage earner or not.

Some objection may be raised that in a competitive system of industry publicity of such important items of information, particularly in the matter of wages may prove detrimental to the best interests of concerns or industries. I may say that I respect that objection up to a point. I do not suggest that the identity of the individual concern giving information should be disclosed. While it would not be sufficient to have average rates of wages for different processes or different departments, because averages can be very misleading, the public information need not disclose the identity of the individual establishments concerned. Obviously the compiling authority should have sufficient power to prevent a disclosure of such information and the compiling authority would of course be bound by the Official Secrets Act.

Another consideration to which I would like to invite the attention of the House is that collection of wage statistics would help standardisation of wages, which has been blessed by the Whitley Commission and the principle of which was endorsed by the Labour Commission at Cawnpore. The employees I think in Cawnpore themselves agreed to the principle of a standardised wage scheme. Now I do not minimise the many technical difficulties, such as differences in process, machinery, raw material, conditions of employment, that such a scheme entails. But admittedly a standardisation scheme would safeguard the position of all those employers who are anxious to deal justly, if not generously, with their labour force. It will enable the interests of these

[Mr. P. N. Saprū.]

employers to be safeguarded against those employers who are unscrupulous or inefficient and thus try to take full advantage of the conditions prevailing in the labour market or wherever trade unions are weak. Sir, I find that I have the support of the Whitley Commission in regard to the suggestion I have made. I will just read out certain quotations from the Whitley Commission's Report. At page 443 they say :

" We further recommend that the Factories Act be so amended as to make it possible to call for a return in respect of wages, following the analogy of the Mines Act ".

Then at page 445, they say :

" So far as wages are concerned, practically nothing has hitherto been achieved with the exception of the inquiries made by the Bombay Labour Office into wages in the cotton mill industry of that Presidency. An attempt was made by the Government of India to institute a wage census in 1921 but retrenchment led to its abandonment. Satisfactory statistics regarding wages can only be obtained from employers and must be collected on a fairly extensive scale on the basis of individual industries. The possibilities of working on samples are very limited ; in its last and most elaborate inquiry the Bombay Labour Office depended on sampling, but the sample taken was a very large one. In most Indian industries there would seem to be wide variations in wages, and even in their methods of calculation and payment, from establishment to establishment in the same centre, so that representative samples are difficult to secure. These considerations mean that fairly elaborate machinery is required for any satisfactory wages inquiry.

" Further we found if any extensive progress can be made without statutory powers, the Bombay inquiries have been carried through with the co-operation of the millowners which was accorded on a generous scale ; but it seems to us unlikely that the same amount of success could be achieved elsewhere by voluntary methods, and we note that the experience gained in Bombay led to the sponsoring of a statistics Bill by the Provincial Government in 1924. Opposition was offered to it, especially by employers who were apparently reluctant to concede the Labour Office extensive powers, and it was abandoned by the Government in 1926. We believe that the principle of the measure was sound ; legislation for the collection of statistics regarding the economic condition of the people is now in force in the majority of countries of any industrial importance. In respect both of wages and of other subjects bearing on the life of the industrial worker, the systematic collection of statistics requires legislation. We observe that the majority of the Indian Economic Inquiry Committee of 1925 advocated the passing of a comprehensive Census and Statistics Act ".

Therefore, Sir, I claim that I have the support—

THE HONOURABLE THE PRESIDENT : It is perfectly clear from what you have read that the Whitley Commission did not make a recommendation of the sort incorporated in your Resolution. They only said that the Factories Act should be so amended as to allow the Factory Inspectors to call for information in respect of such matters.

THE HONOURABLE MR. P. N. SAPRŪ : Exactly this is what I say, that you may so amend the law. I do not specify the law. It may be by amendment of the Factories Act or by a separate Act. The procedure is not sacrosanct. They were dealing with all industries. I have particularly the protected industries in mind, because I should like to know what the exact burden of this protection is to the consumer. I have gone a little further and spoken of protected industries. I emphasise protected industries particularly. This is what I say :

" This Council recommends to the Governor General in Council that he may so amend the law as to make it compulsory for employers of protected industries to submit annually a statement of their annual wage bill ".

They had the machinery of the Factories Act in mind. If you can do this by amending the Factories Act, I have no objection. If you think a separate

piece of legislation is necessary, have a separate piece of legislation. The only respect in which I depart, if at all, from the Whitley Commission's recommendation is that I have introduced the words "protected industries" here.

THE HONOURABLE THE PRESIDENT : They do not suggest at all that it should be made compulsory.

THE HONOURABLE MR. P. N. SAPRU : At page 443 they say :

"We further recommend that the Factories Act be amended so as to make it possible to call for returns in respect of wages following the analogy of the Mines Act".

They say they would give power to the Labour Commissioner or to the Factory Inspector, whoever is the man in charge of the working of the Factories Act, to call for returns. When a return is called for it would be obligatory on the part of the party who is called upon to make the return to submit a return. Just to take an analogy from income-tax, if I am called on to submit a return, then I will have to submit a return; and if I do not submit a return, certain penalties follow. Therefore the word "compulsorily" does not conflict with the recommendation of the Whitley Commission's Report.

THE HONOURABLE THE PRESIDENT : I would thank you to let me know if any such compulsion has been exercised by statutory provision in any other country?

THE HONOURABLE MR. P. N. SAPRU : I will not refer to the totalitarian States, because I hate totalitarian States and I do not want to take them as my guides. In England there are certain industries which are under the Board of Trade and they are of a minor character. They are poorly organised from the trade union point of view and in regard to these industries information is maintained. Then I understand that in the United States of America the Bureau of Labour Statistics, New York, is increasingly receiving information on a voluntary basis from a great many major industries of the country. In Japan which is very nearly a Fascist country, the Bureau of Social and Economic Affairs also secures such information. I cannot at the moment refer to any other countries, but I base my case upon the recommendation of the Whitley Commission.

Sir, I would like to make it quite clear that my Resolution is not directed against employers. In fact the object of the Resolution is to promote industrial harmony and I recognise that without harmony in industry no rapid industrialisation is possible in this country. I think very often the main cause of a dispute is lack of accurate information and I wish this lack of accurate information to be removed. At present people are working in the dark and without adequate knowledge. When a strike takes place, we do not really know which way to make up our minds and I do not wish this condition of things to last. Therefore I am moving this Resolution not in a spirit of antagonism to any class but in order to promote industrial harmony.

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

THE HONOURABLE MR. M. S. A. HYDARI (Labour Secretary) : Sir, the Honourable Member has moved his Resolution in a spirit of complete ignorance. Quite recently in this House we were asked to do something which we were already doing. In this present case we are doing more than what the Honourable Member recommends that we should do. For he has in his Resolution restricted the scope of the statistics only to protected industries;

[Mr. M. S. A. Hydari.]

they are in fact collected in respect of all industries that come within the Factories Act. The present position in British India is that a register of wages is maintained in every factory as defined in the Factories Act and is open to inspection by inspectors. But the Honourable Member may argue that these statistics are not easily available to the public. We are about to rectify this defect. So far no report on the working of the Payment of Wages Act has been issued but we propose to issue one for the year 1939 and if we can get statistics in time, for the year 1938 also ; and, in that connection we have recently addressed all Provincial Governments to let us have amongst others statistics of the wages paid in different industries ; not generally but industry by industry ; and we have no doubt that Provincial Governments will co-operate with us in this matter. In these circumstances, I think it was rather unnecessary for the Honourable Member, who I think knew what I was going to say, to take up the time of the House in delivering the speech he made.

Sir, I hope that, in view of the explanation I have given, he will see fit to withdraw his Resolution.

THE HONOURABLE MR. HOSSAIN IMAM : Will you also publish the number employed or only the wages ?

THE HONOURABLE MR. M. S. A. HYDARI : The number employed too.

THE HONOURABLE MR. P. N. SAPRU : Sir, I was not completely ignorant of the present practice. I know that there is a register of wages which is maintained by the chief factory inspector of every factory, but this register of wages is not easily available to the public and I wish it to receive greater publicity and that is really the object of this Resolution. Therefore, while adhering to the view that there is nothing wrong about my Resolution, I will take leave to withdraw it.

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

DISSOLUTION OF MUSLIM MARRIAGES BILL.

THE HONOURABLE SIR MUHAMMAD YAKUB (Nominated Non-Official) : Mr. President, I beg to move :

“That the Bill to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie, as passed by the Legislative Assembly, be taken into consideration.”

Mr. President, from the Muslim point of view this Bill is one of the most important enactments which have been passed by the Central Legislature during recent years. The Bill, as is clear from its preamble, is not intended to manufacture any new law on the subject of dissolution of marriages, but it is intended to give effect to the provisions of Muslim law relating to khula, or dissolution of marriage, at the instance of the wife. It is also intended to give effect to the provisions of the Muslim law relating to the effect of renunciation of Islam by a married Muslim woman. Another prominent feature of the Bill is to clarify the doctrine of Khia-ul-Balogh, or the option of a Muslim girl to renounce her marriage, as soon as she attains the age of puberty, if she was married by her guardian during her minority.

All these points are fully described and laid down in the Code of Muslim law, but since the advent of British rule in India the British Courts of Justice,

not being well versed in all the branches of Islamic law, hesitated in passing decrees for the dissolution of marriage, hence it was considered necessary to put the provisions of the Muslim law on the Statute-book.

The Muslims would not tolerate any intervention and interference by the Indian Legislature in matters affecting their religion. We have got a complete code of our own laws, which cannot be altered and interfered with by any non-Muslim agency. Our great misfortune is that in India our British rulers enacted laws, and laid down procedure for the administration of justice, without consulting those who were qualified to give opinions on these matters and therefore we are now obliged to go to the Indian Legislature to remove the misunderstandings, and clarify some propositions about which the British Courts of Justice have taken a mistaken view.

Islam is the first religion which recognised the status of women and gave them equal rights with the males. As a matter of fact, the rights and privileges which a Muslim woman enjoys according to Muslim law are not yet allowed to women of any other religion, even in the most civilised countries. But it is an irony of fate that in India a Muslim woman was placed on the same level as the other women of the country and was denied all the rights and privileges which Islam conferred on her. Now that the people of this country have got, to a certain extent, a voice in the Legislatures of the country, some of these hardships and injustices done to the Muslim women are being removed and remedied, and it is hoped that in the course of time the Muslim women in India will regain all the blessings which Islam conferred upon them.

The Bill before the House has been fully thrashed out and discussed from all points of view in the other House, and all those who are interested in this Bill, both inside and outside the Central Legislature, have carefully followed those proceedings. I need not therefore recapitulate and repeat the same arguments here. There is, however, one point about which there was great divergence of opinion and expression of strong views in the other House, and which has also raised a great storm of controversy on the part of the Muslim theologians. The opinion expressed by these dignitaries is that a decree for the dissolution of marriage on the complaint of a Muslim wife can only be passed by a Qazi. The opinion of these dignitaries is worthy of great respect and consideration. I do not think for a moment that this opinion was based on any suspicion of the integrity and intelligence of the non-Muslim judges, nor in any way involved any slur on them, but the fact is that in every religion there are certain functions relating to marital affairs which are performed only by the religious heads of the communities concerned. Neither the Hindus nor the Parsis and Christians would allow the performance of such matters by persons not professing the faith of the parties concerned, and this does not involve any slur upon any other community. Personally, I am strongly of the opinion that it would have been an ideal state of affairs if the administration of the provisions of this Bill could be entrusted to Muslim Qazis but, situated as we are in this country, ruled by non-Muslim rulers, and covering a huge area of thousands of miles, the practical difficulties in giving effect to these wishes of the Muslims cannot be lost sight of. We also find that hitherto decrees for the restitution of conjugal rights, divorce and other allied matters have been passed by non-Muslim judges, and the Muslim divines have accepted them by acquiescence, if not by vocal approval, and a decree for the dissolution of marriage does not very much differ from the class of cases mentioned above.

Moreover, Islam is a practical and a world-wide religion, suitable for conditions prevailing in different parts of the world. That being so, we must find some solution for this difficult problem from the very Code of Islamic laws.

[Sir Muhammad Yakub.]

The miseries of Muslim women in India and their sufferings, on account of non-observance of the Islamic law of Khula, are heartrending, and unbearable, and it would not be wise and discreet to wreck this Bill on account of the non-inclusion of one of the provisions of Islamic Code of law. Let us therefore try to find a way out of the difficulty. God Almighty does not lay more burden upon a person than he can bear, says the Holy Koran. In this case, we find two back doors in the Maliki Code of law. According to the Maliki doctrine, in a country where no Qazi is to be found, in cases of urgent necessity it is permissible that a religious body of Muslims living in the locality, whose number should not be less than three, should form a tribunal and after considering the matter they can pass a verdict according to the Muslim Code of law and their verdict will be considered as the verdict of the Qazi. This view is expressed by Allama-Assaleh-Tunisi, a prominent Maliki Mufti; and in cases of urgent necessity, according to the Hanafi School of Muslim law, it is permissible to act on the Fatwah, or verdict, of the Imams of other schools of law. Therefore, the difficulty in India can be met with in this way that the complainant woman should first get a tribunal, of pious and religious men of the locality, set up in order to fulfil the conditions laid down in the Fiqah and after obtaining the verdict of dissolution from this tribunal she can proceed to file a regular suit in the British Courts of Law, under the provision of this Bill, and obtain a legal decree in order to avoid further complications.

Another device, to avoid the difficulty, can be found by adopting a method known in the Islamic law as the *Tafvil-e-Talaq bawaqat-e-Nikah*, that is to say by authorising the girl to divorce herself on the happening of certain contingencies. In adopting this method, a document known as *Kabin-Naama*, is executed by both the contracting parties at the time of *Nikah* (marriage) and in this document the woman is given power to dissolve her marriage, without the intervention of the Qazi. If such documents are executed in India and the provisions contained in clause 2 of this Bill are inserted in them, the necessity of obtaining the verdict from the Qazi would be done away with and after renouncing her *Nikah* she can go to the Court of law for the purpose of obtaining a legal decree. In this way the objection of the Muslim theologians of India as regards this Bill will be removed.

There is no other point in the Bill which requires elucidation.

I do not claim that this Bill, in its present form, meets the full wishes of the Muslims. Therefore, it is not a perfect piece of legislation. But I hold that the benefits which it would confer upon the destitute and oppressed Muslim woman in India outweigh its deficiencies. In the hope that in future the conditions in India may be more favourable than now and then it may be possible to improve the law according to the conditions laid down in Fiqah, let us accept this Bill as it is.

With these remarks, Mr. President, I commend my Motion for the consideration of the House.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan): Sir, I give my wholehearted support to the Motion which has been so ably moved by my Honourable friend Sir Muhammad Yakub. As has been observed by him, this piece of legislation does not attempt to create any new law for the Mussalmans. It only collates and defines in a precise and clear manner the law which exists on the subject for which this legislation is intended. Sir, under Islamic law, the Muslim women were given equal rights with menfolk. During the early days of Islam, when

people were truly religious and scrupulously carried out the injunctions and duties enjoined upon them by their religion, the Muslim women enjoyed all their rights. But later generations who had become less and less strict in their observance of faith did not so scrupulously regard the injunctions enjoined upon them by their religion. The result was that the menfolk appropriated to themselves all the rights and privileges and denied them altogether to their women. This process of deterioration was all the more pronounced in countries like India where the Muslims came to adopt strange and new practices and customs. The fact is that even though the Muslim woman has been dislodged from the position of equality which is given to her under Islamic law, in spite of that, she is still enjoying many of the rights in Muslim countries which are denied to her in India. The Muslim women are not quite so helpless in those places as they are in India. Fortunately, Sir, the Muslim community in India has now come to realise the blunder they have committed and are now making an attempt to try and do justice to their womenfolk, and it is in consequence of this that this legislation is proposed. It was also on this account that the Shariat Bill and the Cutchi Memon's Inheritance Bill and other pieces of legislation were enacted. This is a piece of legislation which does not make any new law for the Muslim community. Since enough has been said by the Honourable Mover I do not like to dilate much upon the provisions of the Bill. I would only draw attention to a few of its most important features. The first and foremost of these is that this Bill defines in a very clear and compact form all the grounds on which divorce could be obtained by a Muslim woman. These are the grounds on which divorce is available to a Muslim woman in countries which are under Muslim rule. Therefore, Sir, in trying to enact a law so that the Muslim woman might secure divorce on any of those conditions, we are simply trying to give the woman a right which had been taken away from her on account of the selfish conduct of the menfolk. Another feature of this Bill is, that it makes the law quite clear and definite in regard to the option of puberty which is given to a minor girl. In this respect this law which is now being proposed is very satisfactory. In respect of apostasy also things have been made more clear to show that a woman who had been married under the Muslim law will not be entitled to obtain a divorce merely on the ground of abjuring the Muslim faith. As has already been observed by my Honourable friend Sir Muhammad Yakub, there are some features of the Bill about which there is some dissatisfaction still among the Muslims. But those features could not be improved on account of practical difficulties in the way. But I hope some way will soon be found to get over these difficulties and meet the wishes of the Muslims. Therefore, Sir, we are perfectly justified in claiming that the law which this Bill proposes to enact is one which will certainly do great service to the Muslim women in this country. Sir, I support the Motion.

THE HONOURABLE THE PRESIDENT : I would like to know the attitude of Government in this matter.

THE HONOURABLE MR. F. H. PUCKLE (Home Secretary) : Sir, the attitude of Government on this Bill is that it has come to us as a measure which represents the greatest possible measure of agreement which was obtained in another place. Government will take the view, as the Honourable Mover has suggested, that it should be accepted as it stands, unless there are any drafting or consequential amendments which are necessary, of which I am not aware. Government will not be able to support any amendment to this Bill, Sir.

THE HONOURABLE THE PRESIDENT : It is not necessary to read the Motion again. I will put the Question.

THE HONOURABLE MR. HOSSAIN IMAM : We are anxious to speak on this Motion, Sir.

THE HONOURABLE THE PRESIDENT : Very well.

THE HONOURABLE MR. HOSSAIN IMAM : Would it not be proper to adjourn now and come back after lunch ?

THE HONOURABLE THE PRESIDENT : Is it likely to take time ?

THE HONOURABLE MR. HOSSAIN IMAM : Yes, Sir.

THE HONOURABLE THE PRESIDENT : I was under the impression that it would not take long and did not want to trouble the Council to come back after lunch. But as it appears that more time is required I will adjourn the House.

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

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

THE HONOURABLE CHAUDHRI NIAMATULLAH (United Provinces East : Muhammadan) : Sir, I have heard it stated outside the House that this Bill contains provisions which amount to innovation in the Muhammadan law pure and simple and it is on this aspect of the matter that I rise to offer a few remarks. It is also said that according to the text books to which the average lawyer has access, apostasy of the husband is the only ground on which a Muslim wife can obtain dissolution of marriage. In a certain sense this statement is perfectly correct. The position will be greatly clarified if the nature of a Muslim marriage be considered in its true perspective. It is not a sacrament, except possibly to a very limited extent. I say possibly because even as regards that extent, it is open to question as to whether it is sacrament. In all its essentials it is a civil contract. The religious element which is imported in a Muslim marriage may be illustrated by referring to two or three features of it. For instance, two Muslims, contracting parties to a marriage, cannot enter into such a contract if they are within prohibited degrees. Another instance is that a Muslim cannot marry two sisters both living at the same time. There are one or two other respects as regards which it may be said that religious consideration is imported in a Muslim contract of marriage. For the rest it is a purely civil contract and is to be governed by the law of contracts applicable to Muslims.

One of the conditions imposed by the religious law of the Muslims is that a Muslim woman cannot marry a non-Muslim. Now, it is a corollary from this proposition that apostasy on the part of the Muslim husband has the effect of dissolving the marriage tie. When it is said in the text books that apostasy of the husband is the only ground on which the marriage tie is dissolved and a woman can obtain a declaration to that effect from the Court, what is obviously meant is that, apart from anything in the contract of marriage, what dissolves the marriage is the apostasy of the husband. This, however, is by no means the only ground on which a wife, according to the

Muhammadan law, can obtain a decree of dissolution of her marriage. If there is anything in the contract of marriage which entitles her to obtain a divorce from the husband, she can obtain a decree for dissolution of marriage as an enforcement of the condition which is an integral part of the contract into which the parties entered. Instances of this kind of conditions are common enough even in this country. The Honourable Mover has made a reference to one of the conditions which is usually entered in, Kabin-Naamas, that is to say, that on the happening of a certain event, it is open to the wife to divorce herself. In such a case the intervention of the Court is not necessary. She can by her own unilateral act dissolve the marriage if the contingency contemplated by the contract of marriage has happened. Decided cases show that sometimes a condition attaches to a contract of marriage that if the husband marries a second time in the lifetime of the wife, it will be open to her to divorce the husband. If the wife divorces herself and a dispute arises subsequently, it is open to her to prove in a Court of law that in enforcement of a covenant in the contract of marriage, the wife has divorced herself. On proof of these facts the Court will pass a decree declaring what is an accomplished fact, namely, that the wife is no longer bound to the husband. Now, Sir, this is not the only condition that may be made part of a marriage contract. Everyone of the conditions mentioned in clause 2 of the Bill can very well form part of a contract of marriage. For instance, even before this Bill was introduced, it was open to a wife to stipulate, for instance, that if the husband neglects or fails to provide for her maintenance, it will be open to her to divorce herself, or that in case the husband treats her with cruelty, it will be open to her to dissolve the marriage tie ; or again, that it will be open to the wife to divorce herself in case the husband associates with women of evil repute or leads an infamous life. The implication of this Bill, correctly stated, is not that it adds to the grounds on which Muhammadan law justifies dissolution of marriage ; it provides, in effect, that all contracts of marriage taking place after the passing of this Act, will carry with them the conditions mentioned in clause 2 of this Bill. Every contract will be deemed to contain the stipulations which are contained in clause 2. Instances of this kind of implied contracts are very well known in our Statute-book. I may refer to only one of them. In the English law there is a doctrine known as the doctrine of *caveat emptor*, that is to say, anyone who makes a purchase in the open market must investigate the title of his vendor for himself. In India we have got a statutory law to the effect that every contract of sale conveys with it a warranty of title, namely, that the vendor assures the vendee that he has got a title regardless of the fact whether the vendee makes inquiry or not. If this warranty is broken it will be open to the vendee to obtain compensation in enforcement of such implied warranty. I have made this digression only to illustrate the scope of this Bill and its correct significance. As I have said the Bill does not lay down that to the grounds of dissolution of marriage mentioned in the text books these other grounds are added. The ground of apostasy mentioned in the text books is wholly apart from anything in the contract of marriage. The conditions mentioned in clause 2 will be the conditions which according to this Act should be considered to be part of every contract of marriage and arising from it. Now, Sir, it is well known that ignorance of law is no excuse. Everyone is presumed to know the law of the land. After this Bill is given due publicity and is passed by the Legislature, to which every British Indian Muslim is subject, if he enters into a contract of marriage, he must be deemed to contract that his wife is entitled to all that is mentioned in clause 2. Therefore, I think that no doubt should exist that this Bill is in keeping with Muhammadan law, which gives a very wide scope to a contract of marriage. I find that some amendments have been tabled by one of the Honourable Members.

[Chaudhri Niamatullah.]

I do not think this is the proper stage for making a reference to them. If these amendments are moved, I will have the occasion to say something as regards the forum which that Honourable Mover is inclined to insist upon.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Mr. President, this Bill which is before the House is really, as has been pointed out by other Members, a charter of liberty to the Muslim women which has been for a long time denied here. The Anglo-Muhammadan law as was being observed in the law courts was necessarily very restricted. It did not go into the original sources of the law nor did it presume to make inquiries for itself. It relied on what had been the practice of former times. As far as the practice we are concerned with, the Muslim women were really handicapped. They had certain rights which the latter time jurists had denied to them and it is only fair that justice should be done, though at a late hour. It is some consolation, Sir, to us that after all it is we mere men who are trying to do belated justice to the fair sex.

Coming to the merits of the Bill, Sir, I have to express my regrets at the attitude taken by the Government and the Congress Party in the other House. A proposition was incorporated in the original Bill that cases under this Act would be tried by Muslim officers. A plea was taken by a very distinguished lawyer, the Leader of the other House, that it was a sort of reflection on the judiciary of the country and it was opposed by the Government on that account. I have here, Sir, before me the Parsi Marriage Act (II of 1936), which was passed in this House and in the other place—in which a provision even more advanced than that of the Muslim demand has been incorporated without the opposition of Government. In section 18 it is provided—

“ For the purpose of hearing suits under this Act, a special Court shall be constituted in each of the Presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit ”.

THE HONOURABLE THE PRESIDENT : That was a provision which appeared in the Act of 1865.

THE HONOURABLE MR. HOSSAIN IMAM : It does not matter to us, Sir, whether it is an old provision which has been renewed, but it has been incorporated in the later Act.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : But that is a very small community.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non Muhammadan) : But does it specifically refer to Parsis ?

THE HONOURABLE MR. HOSSAIN IMAM : I am coming to that. Then in section 24 (1) it says :

“ The Local Government shall, in the Presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the respective Governments may think fit ”.

* Not corrected by the Honourable Member.

Here I should like to refer to what is the position with regard to these matrimonial courts. In section 19 we find :

“ The Court so constituted in each of the Presidency-towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be. The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be coterminous with the local limits of the ordinary original civil jurisdiction of the High Court. ”.

Then at the end of section 20, we find :

“ The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act he shall be aided by seven delegates ”.

THE HONOURABLE SIR DAVID DEVADOSS : Shall be aided. It is like a jury.

THE HONOURABLE MR. HOSSAIN IMAM : And these juries are to be appointed from the Parsis alone. That is in section 24 (2) :

“ The persons so appointed shall be Parsis, their names shall be published in the local official gazette ”.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official) : But not the presiding officer of the Court.

THE HONOURABLE THE PRESIDENT : Your contention is that the case should go before a Muhammadan magistrate or judge. In the Assembly they held, the Leader of the Congress Party was of opinion that it was a reflection on the whole judiciary and I think he was perfectly justified.

THE HONOURABLE SIR MUHAMMAD YAKUB : He was not justified. I have given a reply to it.

THE HONOURABLE MR. HOSSAIN IMAM : What I am saying is that a special tribunal was here appointed for the Parsis and I am asking whether you are going to give the same to the Muhammadans.

THE HONOURABLE MR. SHAVAX A. LAL : That is not your proposal.

THE HONOURABLE MR. HOSSAIN IMAM : I am asking for it.

THE HONOURABLE MR. SHAVAX A. LAL : It is too late.

THE HONOURABLE MR. HOSSAIN IMAM : It is not too late. We can put it off till a later date. If we can get an assurance that a similar provision will be accepted by the Government. Government is not prepared to give in on this issue because they have a false notion of prestige.

THE HONOURABLE THE PRESIDENT : It is not a question of prestige.

THE HONOURABLE SIR DAVID DEVADOSS : It is a question of administrative convenience. There are 90 millions of Muhammadans. You would have to have 200 courts in each province.

THE HONOURABLE MR. HOSSAIN IMAM : In the amendment I have made you will see that I have provided for administrative convenience. For a small community you can make special provision, but for a big community you cannot make any.

THE HONOURABLE MR. SHAVAX A. LAL : But if the proposal is not before the House, how can you argue that matter ? That is not the provision which you are referring to now.

THE HONOURABLE THE PRESIDENT : The provision was of quite a different type in the Assembly and now this Bill comes here after the Bill is passed. It is too late to ask the Government to accede to your request. However, you are at liberty to move any amendment you like of which you have given notice and it is for Government to accept it or not.

THE HONOURABLE MR. HOSSAIN IMAM : I have to complain, Sir, against the unsympathetic attitude of the Government for not having supported the amendment which was moved in the Assembly by Syed Murtuza Sahib Bahadur to this Bill. That, Sir, is perfectly relevant to the discussion of the Bill as it stands. And I was also in passing referring to the amendment which I propose to move, although I know the fate of that Motion.

THE HONOURABLE THE PRESIDENT : Won't you wait till I come to the clauses ? You are now making a speech on clause 2 rather than a general speech on the Bill.

THE HONOURABLE MR. HOSSAIN IMAM : I thought that it would be better and more convenient to Members of this House if I should formally move those amendments, because I know the fate of the amendments. I did not propose to make speeches on them.

THE HONOURABLE THE PRESIDENT : Even the amendment which you have given notice of is not on all fours with what has been incorporated in the Parsi Matrimonial Act. It is quite a different matter. I cannot allow that amendment at this stage.

THE HONOURABLE MR. HOSSAIN IMAM : I would reserve my speech for that occasion. I shall now confine myself to the provisions of the Bill as it stands. This Bill incorporates what is to be the law for dissolution of marriages. The Honourable Mr. Niamatullah has referred to the fact that marriages under Islamic law are more contractual than sacramental. He referred to one fact but for which the law of contract in the land governs this contract. I am very sorry to differ from him. In the matter of dissolution we are to a certain extent bound by religious laws. It is unfortunate that according to the interpretation of the jurists, one party to this contract, the male, has got much greater privilege than was given to him under the strict interpretation of the statutory provisions of Islamic law, whereas women were denied even the basic rights which they enjoyed. There are only some items to which possible objection could be taken. One of these was referred to by the Honourable Member who preceded me, namely, the question of dissolution of marriage on conversion. That is a very big point which ought to be tackled more properly in a common Act affecting all. You will realise the implication when I tell you that Hindu law and Muslim law are no longer the laws of the land. They are personal laws governing only those who happen to profess that religion. It is a basic principle that by changing a religion, you emancipate yourself from the personal law which was affecting you before your conversion. As soon as you become a convert to another religion, you adopt another set of personal laws. So, it is constitutionally wrong that I should get an advantage of a religion which I have renounced. It was a different thing in the days of Muslim rule, because then Islamic law was the law of the land. It affected you whether you professed that religion or not. But now, when the Muslim law is the law of the community, a person who renounces that religion can no longer take advantage of the provisions of the law which he has renounced. It is as if a person who has changed his nationality and become adopted in another country claiming the rights of citizenship

of the country of his origin. He cannot claim that right. Similarly, as soon as a person renounces a religion, to that religion he becomes as one dead, and therefore he cannot take any advantage of the provisions of the law of that religion. It was a wrong interpretation of the Muhammadan law by the civil courts to make that into a ground for divorce, because it implies another wrong principle. It is one of the fundamental principles that one who injures should not benefit from that injury. Whether he is a Hindu or a Muhammadan or a Christian, a person who has been married, if he changes his religion, he should not take advantage of his original religion. He has injured the party who remains of the original religion, and a person who has injured the other party is not to take advantage. That is bad law and a wrong use of the constitutional principles. For these reasons, this Bill, if it has erred at all, has erred towards being conservative. Clause 4 says that the renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage. If I had a say in the matter, the provision would have been that she would have no right under the Islamic law. A man or a woman who becomes a convert has no right to take shelter under the personal law of the religion which he or she has renounced. It is basically wrong. They should be governed by the rules of their adopted religion and not by those of the religion which they have renounced. However, Sir, I agree with the Honourable the Mover of this Bill that the Bill is not perfect. But if we were to wait for perfection we would have to wait too long. In spite of its defects we find that it is an advance, and in that spirit, Sir, we have no objection to the Bill which the Honourable Mover has moved.

(The Honourable Sardar Buta Singh then rose to speak.)

THE HONOURABLE THE PRESIDENT : Are you interested in Muhammadan marriages ?

THE HONOURABLE SARDAR BUTA SINGH (Punjab : Sikh) : Yes, Sir, I have something to say. In communal matters, the less said the better. Each community should be left to work out its own social and religious obligations.

The question is that when a woman of the Muslim community renounces Islam and embraces another religion, the marriage contract made under the Muslim law should remain intact.

It has to be understood that a Muslim marriage ceremony is in the nature of a contract, with a definite consideration in money and it must draw its sanction from the practice of centuries. If Sir Muhammad wishes to go against this practice, then clearly he is seeking an innovation, which has never been given by the law-givers of Islam.

My impression is that Sir Muhammad Yakub wishes to modify the established practice of Shariat, and I am afraid I cannot vote with him.

THE HONOURABLE SIR MUHAMMAD YAKUB : Mr. President, the speeches which have just been delivered on this Bill do not require any reply from me. There is only one point which has just been raised by my Honourable friend Sardar Buta Singh which requires a reply, and my simple reply to it is that what we have enacted in this Bill is according to the Shariat or Islamic law and not the wrong practice which has prevailed in this country. Sir, in Islamic law there is no such thing as practice, as you find in the Hindu law. We stick to the provisions of our own law and the provisions which are

[Sir Muhammad Yakub.]

enacted in this Bill are under the Muhammadan law. Therefore, there is no innovation; we do not want any innovation. More than this, I won't say anything at this stage.

THE HONOURABLE THE PRESIDENT : The Question is :

"That the Bill to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie, as passed by the Legislative Assembly, be taken into consideration."

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : Clause 2.

***THE HONOURABLE MR. HOSSAIN IMAM :** Sir, I will move the two parts of my amendment separately if I may ?

THE HONOURABLE THE PRESIDENT : Yes.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I move :

"That in clause 2 of the Bill in item (a) of sub-clause (viii) the following words be omitted, namely :

'even if such conduct does not amount to physical ill-treatment'."

This amendment would make the Bill read as follows :

"that the husband treats her with cruelty, that is to say, habitually assaults her or makes her life miserable by cruelty of conduct"

Now we have the unfortunate case of the American courts and some English courts that in matrimonial cases for dissolution of marriage very flimsy excuses which are in reality no excuses at all have been accepted as valid reason for dissolution of marriage. If you want to provide that marriage should be nothing more or less than a glorified companionate marriage, it is all right to make it easier for both sides to divorce each other. But if there is to be an element of home life and co-operation then it should not be so easy to undo what you have done after mature consideration.

3 P.M.

THE HONOURABLE SIR DAVID DEVADOSS : What about the husband sending away his wife by saying "Talaq, Talaq" three times ?

THE HONOURABLE MR. HOSSAIN IMAM : That is what I am going to deal with, that the provisions of Islamic law as far as divorce is concerned do not give that latitude which has been arrogated by the males in the interpretation of the—

THE HONOURABLE SIR DAVID DEVADOSS : That is the law now. It is being administered.

THE HONOURABLE MR. HOSSAIN IMAM : That is the so-called law, but it does not come into the administrative field because there is no necessity to refer the matter to courts of law; so that there is no pronouncement, judicial or otherwise, that that action of the male has sanctity or not.

THE HONOURABLE MR. P. N. SAPRU : You recognise physical ill-treatment ?

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I can recognise the meaning of "treats her with cruelty". Now cruelty, if it is there, must be proved. But to make it so specific that even if such conduct does not amount to physical ill-treatment—it makes it too wide. Therefore, Sir, I submit my amendment to the House.

THE HONOURABLE SIR MUHAMMAD YAKUB : Sir, I am afraid I must oppose this amendment. My Honourable friend Mr. Hossain Imam wants to restrict the scope of the Bill and to curtail the right of woman, which Islamic law has given her, in the matter of dissolution of her marriage. With your permission, Sir, I would refer him to a Hadis which is found in Nassai Sharif. This is related from Ibn Habas. The Hadis is that the wife of Sabit bin Quias came to the Holy Prophet and said :

"Oh Prophet, I have no complaint against my husband and I do not accuse him of doing anything wrong, but I do not want that a Muslim woman should be in such a state that she may not be able to obey her husband, and therefore I wanted a solution". The Prophet asked her, "Have you got the orchard of which your husband made a gift to you at the time of the Nika?" She said, "Yes, I have". The Prophet said, "All right, you return the orchard which you got from your husband and then you have a right to dissolve your marriage".

And she gave back the orchard and the marriage was dissolved. This shows that cruelty or ill-treatment is not required for divorce. Under Islamic law the woman has as much liberty to renounce her marriage as a man has. Therefore, if we accept the amendment of my friend it will curtail the liberty which Islam has given to the woman. In India, for hundreds of years we have been accustomed to repress women and to deprive them of the rights which Islamic law has given to them, and so today when we want to revive the old Islamic law my friend Mr. Hossain Imam finds it repulsive and he is not prepared to give women their due rights.

With these words, Sir, I oppose the amendment.

THE HONOURABLE CHAUDHRI NIAMATULLAH : Sir, I would supplement the remarks which have just fallen from the lips of the Honourable Mover. It seems to me that the last phrase in sub-clause (a) of clause (viii) which Mr. Hossain Imam wants to delete, namely, "even if such conduct does not amount to physical ill-treatment" has been added because legal cruelty has been defined in judicial cases. It has been held not only in this country but also in England that mere ill-treatment of a general kind, however oppressive it may be, does not amount to legal cruelty. Some physical violence is the test, and unless there is physical violence the conduct of the husband does not amount to legal cruelty. In order to obviate the difficulty arising from this definition of legal cruelty, the person who is responsible for this draft has made it clear that to entitle a wife to the benefit of this clause it is not necessary for her to prove that the conduct of the husband was such as to amount to physical ill-treatment. It has made it clear that legal cruelty justifying dissolution of marriage need not necessarily be physical violence, and I think it is necessary that these words should be retained.

THE HONOURABLE THE PRESIDENT (to the Honourable Mr. Puckle) : You have already made it clear that you are going to oppose the proposed amendments. Do you wish to say anything on this amendment ?

THE HONOURABLE MR. F. H. PUCKLE : Government do not accept this amendment, Sir.

THE HONOURABLE THE PRESIDENT : The Question is :

“That in clause 2 of the Bill in item (a) of sub-clause (vii) the following words be omitted, namely :

‘even if such conduct does not amount to physical ill-treatment’.”

The Motion was negatived.

***THE HONOURABLE MR. HOSSAIN IMAM :** Sir, I move :

“That in clause 2 of the Bill to clause (c) of the proviso, the following new proviso be added, namely :

‘That in suits on grounds (ii), (iv), (viii) shall not be heard until they have been referred to a conciliation board consisting of representatives of the parties with a neutral president to be appointed by the Court and the conciliation has failed to satisfy the parties’.”

The reason why I move this amendment is that it is sometimes the case that in the heat of the moment a woman may try to apply for a divorce. If the matter remains in the Court the atmosphere there is not conducive to a reconciliation and it would be better, as I regard marriage as more than a mere companionate arrangement and civil contract, that efforts should be made to bring the parties together. And here the Honourable Mover will find that I have something better to fall back upon than he has, because it is enjoined under the Islamic law that dissolution of marriage should not be indulged in lightly and efforts should be made by the parties to come to an agreement. But where the agreement fails or there is no possibility of an agreement, it is only in those cases that dissolution should take place. And this condition, Sir, applies to males as well as females, and that is what I referred to formerly, that the male had not that liberty which he now has arrogated to himself under the misinterpretation of the Islamic law.

With these words, Sir, I move this amendment.

THE HONOURABLE SIR MUHAMMAD YAKUB : Mr. President, I quite agree with the Honourable the Mover of this amendment that an effort should be made to bring about reconciliation between the husband and the wife if they disagree on a certain matter, but I am afraid that if effect is given to the amendment which he has now proposed it will make the provisions of this Bill altogether nugatory, because the effect of his amendment would be that no decree would be passed unless a reconciliation board is formed by the consent of the parties. When the husband knows that it is necessary that there should be a reconciliation board and he should be present in the Court, he will make every effort to absent himself, and if the husband does not appear there will be no reconciliation board and no decree for dissolution will be passed and therefore the provisions of the law will be made altogether nugatory. Therefore, Sir, I oppose the amendment.

The Motion was negatived.

Clause 2 was added to the Bill.

Clauses 3, 4, 5 and 6 were added to the Bill.

* Not corrected by the Honourable Member.

***THE HONOURABLE MR. HOSSAIN IMAM :** Sir, I rise to move the following amendment :

" That the following new clause be added to the Bill, namely :

' 7. (1) The High Court shall have power to make rules under this Act.

(2) Suits under this Act shall be instituted in the Court of the District Judge, who shall transfer the case to the file of a Muslim officer under him if there is any such officer. Where there is no Muslim officer, the Judge may try the case himself and if he is himself a Muslim he need not transfer it to any Muslim officer under him and may himself try the case '."

I had made some reference to this in my opening remarks. I would like to point out that the Bill as it is now framed contains no provisions for its procedure. Naturally the case will be governed by the Civil Procedure Code and under that cases under this Act will usually go to the file of the junior officers with civil jurisdiction in the area in which the persons are resident, with the result that usually these cases will be tried by Munsifs or in certain places by second class Sub-Judges. They will not go to the Courts of experienced judicial officers.

THE HONOURABLE SIR DAVID DEVADOSS : It depends on the value of the suit. Put a high value on it.

THE HONOURABLE MR. HOSSAIN IMAM : If it is going to be a declaratory suit, it will naturally come——

THE HONOURABLE SIR DAVID DEVADOSS : The value can be anything. You can put any value on it.

THE HONOURABLE MR. HOSSAIN IMAM : For the purposes of jurisdiction, it is a difficult question for me to say what will be the procedure. Ordinarily we find that in civil matters the cases usually go to the junior officers if they are not highly valued and it is difficult to have a high value on dissolution of marriage. It is unfortunately the case that Government have taken strong exception to this provision. I have tried to meet their objection. The objection of the other House was that there are many places where there are no Muslim officers available. It was a reflection on the——

THE HONOURABLE THE PRESIDENT : You have already made that point.

THE HONOURABLE MR. HOSSAIN IMAM : I do not wish to go into those points. I have tried to meet those difficulties. I would be satisfied, as the administration of this Act will be mostly in the hands of Provincial Governments, if Provincial Governments make some rules under their executive power to rectify this mistake. Even if no legislative provision is made it is possible by executive orders to so formulate the rules that it may be possible for the Judges to act as I intend. The Judge is not bound to keep the case on his own file. He usually transfers cases to other Courts ; he has the power to do so. If there was a provision in this Act for the institution of suits in the Court of a District Judge, even that would have been a welcome change. In the case of Parsi marriages, suits are to be filed before the High Court, before a Judge of the High Court. For a small community you have provided this safeguard.

THE HONOURABLE THE PRESIDENT : It is not the High Court, but the Matrimonial Court.

THE HONOURABLE MR. HOSSAIN IMAM : Before one of the Judges of the High Court.

THE HONOURABLE MR. SHAVAX A. LAL : No, not in all cases. Provision is made for cases to be heard by Matrimonial Courts in the mofussil.

THE HONOURABLE THE PRESIDENT (to the Honourable Mr. Hossain Imam) : Please proceed ; there is no analogy between the two.

THE HONOURABLE MR. HOSSAIN IMAM : I am referring, Sir, to the fact that there you have provided that suits shall be brought before a Court which shall be presided over by a High Court Judge. You have given power to the province.

THE HONOURABLE MR. SHAVAX A. LAL : There is a Matrimonial Court in Surat where there is no High Court.

THE HONOURABLE MR. HOSSAIN IMAM : Power has been given to Provincial Governments to form other courts ; the three Courts that have been provided by the Act itself are to be presided over by a Judge of the High Court.

THE HONOURABLE MR. SHAVAX A. LAL : More than half the community is in Bombay.

THE HONOURABLE MR. HOSSAIN IMAM : The Central Government made provision only for three chief Matrimonial Courts and these Courts, the Act said, were to be presided over by a High Court Judge. No provision that a District Judge can try these cases has been made in this Act. That is, Sir, a genuine grievance that we have against the Government. They can give belated justice. If by means of executive order they try to rectify this mistake—

THE HONOURABLE MR. P. N. SAPRU : The right of appeal will remain.

THE HONOURABLE MR. HOSSAIN IMAM : The right of appeal remains. The trouble is that in such cases it is difficult to prolong the case. They should not be prolonged. They should ordinarily be tried and decided quickly, because justice delayed is justice denied, and in such cases prolonged legal process should not be encouraged, but discouraged and the first judgment should be pronounced by such an officer as would carry the weight of his judgment and mature experience. It is unfortunate that our detractors—I am referring to the Muslim League Party—should have taken this occasion to throw the blame of the sins of commission of the Government and the Congress on our shoulders. The President of the Jamiat-ul-Ulema which met here a few days ago in his address referred in rather strong terms to the absence of the Muslim League Members in the other House and said that that was the reason why this provision could not be incorporated in the Act. As a matter of fact it was the Muslim League Members alone who voted for this Motion and the rest of the House voted against it. Here, Sir, we have not got that, because we realise the force of the argument. Therefore, I have watered down the demand and I hope that Government will see its way to give relief where relief is due.

Sir, I move.

THE HONOURABLE SAYYED MOHAMED PADSHAH SAHIB BAHADUR : Sir, I rise to support this amendment on this ground only, that half a loaf is better

than no bread. Our Muslim demand has always been that such matters have got to be decided by a Muslim, and since it is not possible at present to have it so, in all such cases, my Honourable friend Mr. Hossain Imam desires that it should be made available to the Muslim where such arrangements could easily be made. Now, Sir, just a word about the necessity of having a Muslim tribunal.

THE HONOURABLE THE PRESIDENT : This Bill has come from the other House. There is nothing to prevent you from bringing an amending Bill on the lines stated by Mr. Hossain Imam after this Bill has been passed.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : I wish to justify the reason which prompts him to ask for this particular kind of forum. We know, Sir, that a marriage is complete only with the consent of the parties who enter into the contract. Therefore, even though Muslim law has permitted a guardian to give permission for bringing about a marriage of a minor child, the marriage would not be considered to be quite complete and final until the minor confirms it by her action on attaining puberty. So that, in view of that fact, a minor girl who has been married before she has attained puberty has got the option of repudiating it after she attains puberty. Thus, Sir, the marriage can only be made complete with the consent of the parties to it and likewise can be dissolved only with their consent. So far as the man is concerned he has got the liberty to dissolve the contract by pronouncing Talaq in some particular way. But if the wife wants the marriage to be dissolved, she cannot effect dissolution by herself and the power to dissolve it has to be exercised by somebody else to whom the authority is delegated. This authority gets vested in the third party by virtue of the Muslim law. Since it is a delegated authority and is of a nature which has got a religious tinge about it, it is but fair and reasonable that this authority should be exercised by one who is a Muslim. Therefore, Sir, it is through no suspicion of the non-Muslim judiciary that this is insisted on, it is merely due to the fact that the Muslim law requires it and by its very nature the contract can only be dissolved by the persons who have entered into it or by those to whom the authority is lawfully delegated according to the requirements of the Muslim law.

THE HONOURABLE MR. F. H. PUCKLE : I will not take the time of the House, Sir, for more than a minute but, as Government have been cast in the role of the first murderer with my Honourable friend opposite as second murderer, it is incumbent upon me to make one or two comments. I think it is a recognised practice of this House that when a Bill comes up here in the form of a compromise representing what is the greatest measure of agreement which it has been possible to obtain, it is usually our practice to accept it.

THE HONOURABLE THE PRESIDENT : That is so.

THE HONOURABLE MR. F. H. PUCKLE : In addition, my Honourable friend Mr. Hossain Imam will realise that, considering the attitude which Government took in the other House, it is quite impossible for us here to take up any different attitude. He suggested that something in the nature of a hint should be given to Provincial Governments that they might by arrangement make some provision for suits of this kind to be tried by Muslim Judges. In the first place, I fancy the hint to be given would have to be given to the High Courts and High Courts, I think very properly, do not take very kindly to hints of that kind. And, further, I do not think, considering the attitude

—[Mr. F. H. Puckle.]

which Government have consistently adopted on this particular amendment that we can convey any hint to anybody without giving an indication of what we ourselves thought. That would not help the Honourable Member at all.

Finally, Sir, a suggestion was made or rather a question was put by the Honourable Mr. Hossain Imam to the Government whether they would agree to some such alteration in the Bill as would provide a jury of Muslims to sit with the trying Judge. Well, Sir, that is not a fair question at this stage. We have been I don't know how many months considering the matter while this Bill has been on the anvil. We cannot allow questions like that to be put at the last moment.

THE HONOURABLE SIR MUHAMMAD YAKUB : Sir, after hearing the speech of the Honourable Mr. Puckle and seeing the attitude which has been taken by the Government in this matter, I have no other alternative but to oppose the amendment. Although I have every sympathy with the objects of the amendment and, as I said in my first speech, I personally would have liked that the provisions of this Bill had been administered by a Muslim Judge but considering, as I said, the conditions prevailing in this country, the practical difficulties cannot be ignored. My friend Mr. Hossain Imam has referred to the Parsi Marriage Act. Well, I think, Sir, there can be no comparison between the two cases. In the first place, the Parisis are a very small community of less than a lakh, and mostly confined to one Presidency, and the cases of dissolution of marriages in that small community must be very few and far between and it may be possible to arrange for a special forum to decide these cases. But for a big community like the Muslims, numbering 9 crores, extending from Kashmir to Cape Comorin, that have different sections and different communities amongst themselves, I think it would be very difficult for a non-Muslim Government to appoint Muslim Judges for them. Then, Sir, the objection may be that, if a Sunni Qazi was the Judge appointed or asked to take the case, Shiahhs might say they cannot agree to a Sunni Judge. And other objections of the same sort may be raised. So, while I have every sympathy with the object underlying this amendment, I am unable, at this stage, to accept the amendment and I hope my friend Mr. Hossain Imam, seeing the atmosphere in this House and in the other House will not insist upon this amendment. Of course, we know what the conditions are.

THE HONOURABLE CHAUDHRI NIAMATULLAH : Sir, I wish to say a few words on this amendment and I must confess that I cannot persuade myself to take the same view of it as the Honourable Sir Muhammad Yakub. Personally, I think that an average Muhammadan lawyer for all practical purposes knows as much of Hindu law as a Hindu lawyer does. Similarly, the average Hindu lawyer for all practical purposes knows as much of Muhammadan law as a Muhammadan lawyer does. If it is only on the score of competency to administer this part of the Muhammadan law that a Muslim Judge is insisted upon, I strongly differ from those who advocate that view.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : It is not for that reason. No one has suggested that.

THE HONOURABLE CHAUDHRI NIAMATULLAH : If once it is conceded that a non-Muslim Judge, be he a Munsif, a Subordinate Judge, a District Judge or a High Court Judge, is as much competent to tackle the problems which might arise under this Act as a Muslim, then I fail to understand what other object will be served by a Muslim Judge alone having jurisdiction to take

congnozance of disputes arising under this Act? I have been told more than once that the sense of justice of a non-Muslim Judge is not questioned. It is conceded on all hands that nothing but justice is to be expected from non-Muslim Judges, and if it is also conceded that they are equally competent to dispose of the cases arising under this Act, I fail to understand why any fetish should be made of the demand that he should be a Muslim Judge who should have congnozance to decide cases of this kind. Take any book on Muhammadan law and you will find that Qazi is referred to in connection with a variety of subjects. In British India the principal civil court of original jurisdiction, that is to say, the District Judge, is the Qazi for the purposes of Muhammadan law. If this amendment had gone no further than this that suits under this Act shall be instituted in the Court of the District Judge, I would have whole-heartedly supported it. But, in the first place, the amendment goes further than this, and in the second place I find that the Government are not inclined to accept an amendment even to this limited extent. I think that Muhammadans will have no misgiving whatever if suits under this Act, like other suits in which Muslim parties are concerned, are instituted in such courts as we have in British India, and no distinction should be made between this class of suits and any other class of suits. I therefore oppose this amendment.

THE HONOURABLE THE PRESIDENT : It is not necessary to repeat the amendment now. The Question is that the new clause proposed by Mr. Hossain Imam be adopted.

The Motion was negatived.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR MUHAMMAD YAKUB : Sir, I move :

“ That the Bill, as passed by the Legislative Assembly, be passed. ”

Mr. President, I do not propose to make any speech on this occasion. I will only say that the Muslim women of India will give a great sigh of relief this evening when they come to know that this Bill has been passed by this House. Sir, this Bill will not merely prove as an instrument of dissolving marriages, but I think that it will also have a very healthy preventive effect. That is to say, when men, the superior lords of the world, come to know that according to the provisions of this Act women could get rid herself of an unworthy husband, then probably the husband will think twice before ill-treating his wife or doing anything which would endanger her happiness. Therefore, I think that this Bill will have a great value as being a preventive Bill.

I am thankful to the Members of this House who have supported this Bill and I do hope that our non-Muslim sisters in India will soon have the same privilege which the Muslim women are getting today, and I hope that a Bill which will give the same right to Hindu women will soon be enacted by the Central Legislature. With these remarks, Sir, I commend this Bill to the House.

THE HONOURABLE LT.-COL. SIR HISSAMUDDIN BAHADUR (Nominated Non-Official) : Mr. President, Sir, my attitude towards this Bill is that although it may be all right in principle, the time is not yet come for us to have a law on these lines, especially with the masses of the people so ignorant.

THE HONOURABLE THE PRESIDENT : I am afraid you are too late now.

THE HONOURABLE LT.-COL. SIR HISSAMUDDIN BAHADUR : I want it to be on the record, Sir. I know I am late, Sir.

Divorce, being a matter which affects family life by disrupting it, should not be hastily allowed to people who are not sufficiently allowed to make proper and just use of the privilege. We Muslims have our own religious laws which provides all that we need in regulating family life and the rights of women. Just now, I submit to the House, the necessity has not arisen for the passing of this Bill, which in its effects seriously cuts into Muslim law. I have yet to hear that the Muslim public, particularly the women ever wanted a law of this kind.

THE HONOURABLE THE PRESIDENT : You want to keep Muslim women under perpetual servitude ?

THE HONOURABLE LT.-COL. SIR HISSAMUDDIN BAHADUR : No, Sir.

Hardly 2 per cent. of India's population is educated, and of this women constitutes an infinitely small fraction. Firstly, I would propose that the Provincial or the Local Governments should not be allowed to interfere with or pass any legislation on religious matters on the following grounds.

There are eleven ministries in India and each ministry looking at the same religion with its own view point will distort it after its own fashion, resulting in a variety of sub-religions. Further, after a duration of five years, and even before that owing to votes of no-confidence the ministries will keep changing, each of which bringing with it some new rules, or amending some unsuitable clause or abolishing some superstitious rites after its own fantastic ideas. It is also worth noting that when I was on the Army Requirement Committee, I was informed on examining an authorised witness that there are already 122 religions and sub-religions, and 222 languages in India. In the circumstances I would strongly propose that the power of passing the legislation on matters relating to religions should rest with one centralised body, and that evidently should be the Central Legislature and even then by persons well versed in and highly devoted to their religion and not by people of highly academic qualifications who are so ignorant of their faith that they can not read their own religious books. Secondly, I think that the marriage laws that have just been passed by the Lower House will at the very start encourage about 25 per cent. married women to divorce their husbands, owing to some existing unhappiness. Further, it will increase crime and murder especially in the North West Frontier Province, as ignorant and inexperienced women will surely take advantage of this new social religion. Only recently I was talking to a gentleman in my car about these new changes that are going to be brought about in Muhammadan law. My Pathan driver seemed to have been suddenly startled and remarked, "The very day my wife utters that she intends divorcing me, I shall chop off her head with an axe". I do not mean that women are not entitled to their due rights, but women should remain as women for which nature has created them. They should be well trained housewives, and jealously perform their duties of looking after their children, and keeping their husbands happy and well dressed. The man's part is to defend his country on the battlefield, to work hard in the field or office for the maintenance of his family, and education of his children. There is a proverb in Persian which means that everything is made by nature for a definite purpose.

In the good old days the husband had to provide gent's clothes for himself and ladies clothes for his wife. Nowadays in addition to this, he has to undergo the expenses of an extra outfit of gent's clothes for his wife, car for her to drive about, horses to ride on, regular supply of cigarettes, sporting requisites and other such luxuries, once considered the necessities solely of men. For the average husband, the meeting of the costs of such a sumptuous budget will mean his becoming a debtor, on the other hand his refusal will mean mutual unhappiness which may finally result in a divorce.

In going back to the fundamental question of the right of women to divorce their husbands under the new law, I may add that the number of divorces having increased, great complications will arise in the apportionment of property to issue of the first husband, second husband, and may be even the third husband. It is by no means our work to interfere with the law and order laid down by God and the Prophets. If Members desire to express their views, I would request them to do so after deep consideration and co-operation with the large masses of rural classes, who may be the greatest sufferers. It is no use asking the Deputy Commissioners to get the opinion of the people under their jurisdiction, because they will consult only a few prominent men who will agree with them to the very best just to gain their favour.

THE HONOURABLE MR. RAMADAS PANTULU (Madras : Non-Muham-madan) : Sir, I rise to congratulate the Muslim Members of both the Houses in this Legislature on the very progressive outlook they have adopted in regard to this legislation. Sir, if so far members of the Hindu community have not intervened in the debate, it is not because we are not in full sympathy with the measure but because we thought it was a matter solely concerning the Muslim community. But at the stage of passing this Bill, as passed by the Assembly, I wish to associate myself with my Muslim colleagues in saying that it is a very beneficial measure. I would appeal to the Muslim Members of this House to adopt a similar attitude towards our Bills when they come here and though they may not intervene in our debates, we hope they will support us in all progressive measures that we bring before this House. Legislation in this country can only be progressive if both communities co-operate in seeing that the law of Hindus and Muslims is brought into line with the requirements of modern needs.

With these words, Sir, I support the Motion.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill, as passed by the Legislative Assembly, be passed. ”

The Motion was adopted.

DELHI MASAJID BILL.

THE HONOURABLE KUNWAR HAJEE ISMAIEL ALIKHAN (Nominated Non-Official) : Sir, I beg for leave to introduce :

“ A Bill to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatepuri Masjid and Kalan Masjid of Delhi. ”

If you will allow me, Sir, a few minutes at this introductory stage it would help to make the reasons for this Bill clear. The objects of the Bill are set out in the Statement of Objects and Reasons. I have stated what this Bill

[Kunwar Hajee Ismaiel Alikhan.]

is intended for. It is to make better provision for the administration of Masajid mentioned above and for many other mosques for which the Chief Commissioner of Delhi thinks it necessary. Mr. President, these historical mosques are situated at the heart of the capital of the Government of India with a large property which yields incomes of a considerable amount. Unfortunately the present management is anything but smooth. The Government had an agreement about a century back appointing a committee, but membership of that committee was for their lifetime.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab Non-Muhammadan): What is the income?

THE HONOURABLE KUNWAR HAJEE ISMAIEL ALI KHAN: I could give the figures and I have got them here but it would take time and unnecessarily enlarge my speech. The income is approximately over a lakh.

Well, as I was saying, that committee appointed a century back could only lapse on the death of the members and the existing position is considered very undesirable, and the chief object of this Bill is to put the management of these mosques in the hands of independent Muslims who will be elected by some representative machinery. At present the management is vested in the hands of those who are interested in the finances of the mosques and therefore the arrangements are far from satisfactory. Sir, it was perfectly right for the Government to arrive at the sort of agreement they did with the representatives of the Muslim community in 1862, but in the year 1939, when the method of government itself has changed from autocracy to democracy, then certainly it is legitimate for us to ask this Honourable House to make changes which are desirable. I hope the Government will also co-operate in seeing that this change is brought about without any loss of time. I would further appeal in the name of democracy to my colleagues in this House to extend their support to this popular measure.

The Motion was adopted.

THE HONOURABLE KUNWAR HAJEE ISMAIEL ALIKHAN: Sir, I introduce the Bill.

PARSI MARRIAGE AND DIVORCE (AMENDMENT) BILL.

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

"That the Bill to amend the Parsi Marriage and Divorce Act, 1936, be taken into consideration."

The order for payment of permanent alimony to the wife, as contemplated by clauses (a) and (b) of sub-section (1) of section 40 of the existing Act, covers two cases. In clause (a) the payment is "secured" by a charge on the husband's property, and in clause (b) it is a personal order on the husband to make "monthly payments" to the wife.

The intention of the framers of the Act of 1936 definitely was to make payment of alimony of any sort cease, if the wife at any time after the order either became unchaste or re-married. Unfortunately, however, the expression "while remains chaste and unmarried" was placed in clause (a) and inadvertently omitted from clause (b).

This has caused injustice to parties and the Bombay High Court in a matter which came up before it in appeal expressed its inability to give effect to the Act in view of the language employed. Amending the Act is therefore intended to remove the doubt and express more clearly the intentions of the framers of the Act.

With these words, Sir, I move.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official): Sir, I move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th July, 1939."

as an amendment to the original Motion.

THE HONOURABLE THE PRESIDENT: You have not given notice of the amendment, but I shall suspend the Rules of Business and allow the amendment.

THE HONOURABLE MR. SHAVAX A. LAL: Sir, I concede that section 40, as it now stands, is defective and the defect is obviously due to a drafting error. Sub-clauses (a) and (b) of clause 2 of this Bill aim at remedying the error and to this extent there can be no objection to this Bill. Sub-clause (c) would, however, require careful scrutiny. The proposed sub-section (3) of section 40 is defective in the sense that it will permit the husband to refuse payment on the frivolous assertion of the wife's unchastity and she will have to take the matter to the Court. The more appropriate method would be to require the Court to revoke its own order if in an application to it the husband can satisfy the Court of the wife's unchastity or re-marriage. It might be necessary for this purpose to substitute for the words "shall cease to have effect" some such words as "shall, on application by the husband, be revoked by the Court".

Besides, Sir, sub-clause (c) introduces a new substantive provision and, however desirable that provision may be in principle, it is essential in matters touching the personal law of a community to have the views of the community before the provision is inserted in the Act. Government would therefore insist on the Bill being circulated for eliciting public opinion.

THE HONOURABLE MR. M. N. DALAL: Sir, I should like just to say that after the explanation given by the Honourable Member I am agreeable to the Bill being circulated for eliciting public opinion.

THE HONOURABLE THE PRESIDENT: Amendment moved :

"That the Bill to amend the Parsi Marriage and Divorce Act, 1936, be circulated for the purpose of eliciting opinion thereon by the 15th July, 1939."

The Motion was adopted.

DIVIDENDS AND INTEREST RETURNS BILL.

THE HONOURABLE MR. G. S. MOTILAL (Bombay: Non-Muham-
madan): Sir, I beg to move :

"That the Bill to provide for the submission of certain statements of companies incorporated in or carrying on business in India be circulated for the purpose of eliciting opinion thereon."

[Mr. G. S. Motilal.]

Sir, this Bill gives power to Government to call for certain returns from companies either carrying on business in India or incorporated in India, so that Government may be in a position to compile statistics required to show what incomes are received from Indians and by those who are not Indians. It does not make any difference with regard to the rights of any party, whether he is an Indian or a German or of any other nationality. It only enables the Government to get the information and that information will enable the community and the Government to have clear statistical data before them.

Sir, with these words I propose that the Bill be circulated for the purpose of eliciting opinion thereon.

THE HONOURABLE MR. H. DOW (Commerce Secretary) : Sir, I wish to oppose the Motion for circulation of this Bill. The circulation of the Bill appears to me to be quite unnecessary. There has been a considerable delay since the Bill was introduced, and the Bill has been published in the Gazette. Even if the Bill were now circulated in the ordinary way, we could not expect on a matter of this kind to get representations except from commercial associations. Now, Sir, a large number of these commercial associations have already sent in their opinions about this Bill. All the comment on the Bill has been entirely hostile. Nobody has spoken a word in favour of the Bill, and therefore for that reason I think it would be a waste of time for us to circulate the Bill. The Bill is already well known to commercial associations, and had there been anything to say in favour of it, certainly some at least would have said it.

If we come to the merits of the Bill, it is not justified by the vague statement in the Statement of Objects and Reasons, that it is for "measuring the economic progress of the country". I admit that it would be an advantage if we had more information of a kind which would enable us to make a more precise formulation of the Indian balance of trade. But if Honourable Members look at this Bill, they will see that the provisions in this Bill go very far beyond that, and they would be certainly very strongly objected to on the ground of expense by all companies. At the same time the information collected in this manner would be highly inaccurate and misleading, and would not therefore serve the purpose which is stated in the Statement of Objects and Reasons—measuring the economic progress of the country. For example, Sir, I doubt if any company is in a position to say whether its non-Indian shareholders are British subjects domiciled in India or are merely residing in India. There are a very large number of Indian Christians and Parsi names which are exactly the same as European names, and they would be quite indistinguishable in the particulars given in the Share Register. Another point is that a large number of shares are acquired and registered through banks, and interest on them is paid to the banks. The companies have no knowledge of the domicile of the man to whom interest is eventually paid. And to take the case of dividends paid under the blank transfer system, the company would have no information whatever regarding domicile. It might be said that if we pass this law, companies will have to put themselves to the trouble of ascertaining these facts. I submit, Sir, that they could only do that at very great expense, and in many cases we could not expect a company to provide us information at all. For example, take the case of a company incorporated in the United States of America, doing some business in India, and maintaining its register of bondholders and shareholders in New York. Could you expect a company of that kind to collect and supply this information, especially, Sir, if its stock happens to be bearer stock? Residents in India who own shares in international

companies might hold their shares in the names of nominees abroad. Again, the information, if obtained at all, will be entirely unreliable.

I have, Sir, said perhaps enough to show that the object of this Bill would not in any sense be achieved. The information which we would
 4 P. M. obtain would be highly inaccurate, and at the same time it would impose a very serious burden on companies who had to collect and supply this information. I may say, incidentally, that in this Bill there is no penalty clause for refusal to supply this information, neglect to supply it, or for supplying wrong information. The only penalty clause relates to the public servant who may misuse this entirely inaccurate information when he gets it.

As I indicated when I started, there is something to be said for the collection of some of this data in a modified form, although the greater part of it would be of no use at all; and I would suggest to the Honourable Member that, if he at all wishes to pursue this subject, the proper way to proceed would be by an expansion of the relative clauses of the Indian Income-tax Act. The whole of the particulars with which this Bill deals relate to income which is subject to income-tax. If he proceeded on that line, I am not in a position to say that his Bill would become any more popular, but it certainly would be very much less burdensome and expensive to companies, and I think too the information collected would have some value more than a mere statistical value. At any rate, it seems to me quite wrong to introduce a separate Bill to deal with this matter, which would largely duplicate the already heavy work which companies have to carry out.

THE HONOURABLE THE PRESIDENT: But in that case the Income-tax officer under the secrecy clause would not be able to pass the information.

THE HONOURABLE MR. H. DOW: No, Sir. There is a good deal of information which is collected under the Income-tax Act which is published and I do not think anything would stand in the way of publishing a compilation of results, which is all that the Honourable Member, I think, has in view. Even in his Bill he does not propose to publish returns which are received from individual companies. So that I think if the matter is to be pursued at all, that is the proper way to pursue it. But at any rate, no advantage, I think, would be gained by the circulation of this Bill. It would be simply a waste of the time and money of Government and it would, as I say, certainly be resisted by the whole body of commercial opinion. Therefore, Sir, I oppose the Motion.

THE HONOURABLE MR. G. S. MOTILAL: Sir, the Honourable Member speaking for the Government has said that this Bill was published in the Gazette and a large number of opinions have already been received by Government. None of the Members of the House except Government themselves have got those opinions. My first inquiry, therefore, is whether those opinions will be placed on the table? If these opinions are to be placed on the table, I would be prepared for a postponement of this Motion for a short time.

THE HONOURABLE THE PRESIDENT: I cannot allow a postponement. It must either be accepted or rejected.

THE HONOURABLE MR. G. S. MOTILAL: Then, Sir, may I know—I wish the Honourable Member had said from how many commercial associations opinions had been received. He did not give that information. There are a number of Indian associations and European associations from whom opinions had to be obtained, and were all of them hostile?

[Mr. G. S. Motilal.]

He said the opinions had been hostile. I know of one very important association whose opinion, as far as I am aware, was not hostile. Now, only if we had the opinions before us, would we be able to judge. It is not otherwise fair to ask the House to accept the statement that opinions from every one of these associations have been hostile. He did not say if they were all hostile or only a majority of them. How many associations were hostile? As far as could be gathered from his speech—

THE HONOURABLE MR. R. H. PARKER: He said that none were in favour.

THE HONOURABLE MR. G. S. MOTILAL: He said they were hostile.

THE HONOURABLE MR. H. DOW: All I said was that those associations whose opinions had been received—I should think they are something like a dozen but I cannot say off-hand—had all opposed the Bill, and no opinion in favour of it had been received from any association.

THE HONOURABLE MR. G. S. MOTILAL: From how many associations have opinions been received?

THE HONOURABLE MR. H. DOW: As far as I remember, in the neighbourhood of a dozen.

THE HONOURABLE MR. G. S. MOTILAL: And am I right in thinking that most of them are not Indian Associations?

THE HONOURABLE MR. H. DOW: Some of the most trenchant criticism came from the Bombay Millowners Association, which is not particularly under the domination of Europeans.

THE HONOURABLE MR. G. S. MOTILAL: Well, there are other associations. The Indian Merchants Chamber of Bombay is representative of Indian business opinion and the opinion of that association has been far from hostile. Of course, they were expecting that the Bill would go to them for opinion, but informally, as far as I have been able to gather, they have been in agreement with the principle of the Bill. They may suggest some further provisions but unless we have that material before us I would ask the Members of the House not to attach much importance to the report that the opinions received so far have been most of them mere hostile rather than favourable. I personally do not see why they should have been hostile. What is the reason? It is not merely the hostility but the reasons which they advance that will guide the House. Here this Bill is brought in order to collect certain information. Ordinarily, if there is no provision the companies will not furnish the information. They may or they may not. They may say it is unnecessary for us to do so. There is no obligation. We might furnish it to you in one year and not furnish it in another, or we will not furnish it at all. And unless Government have legal authority they too would not like to ask for this opinion. For instance, if there are banks, they are not supposed to give the secret of their clientele even to Government. So far as the question of the cost of collecting this information is concerned, I should think it will be very small. If the ground of objection is only that, then they ought to pay the cost. Every shareholder should pay his share. His name is there—the register is there. In the event of such legislation being passed, he will

have to say whether he is an Indian or a non-Indian, what is his domicile. I do not see how any heavy expense will have to be incurred. The names may be a little confusing. I quite agree that there are some names from which you cannot say whether they are Indians or Europeans. But not always. Such are very rare cases. Take the case of Parsis also. Some gentleman may be called Mr. Romer, but you have got Dinshaw along with it—so that Mr. Dinshaw Romer does not offer any difficulty. I do not know about Bengal. There may be a few Indians who have adopted English names but in their case also, if you ask their nationality, if you have a law like this, it will be no extra trouble for them to give their nationality. I do not think there is any reason for a man giving a wrong nationality. The question of cost is a very simple one. It will not put the company to any cost at all worth speaking. It is just one clerk doing the business and he will be able to collect this information.

Then, Sir, what the Honourable Member suggested was that he was not opposed to the spirit of the Bill but he suggested another method, that we should bring in some amendment of the Income-tax Act to get this information. But in the case of the Income-tax Act, I am afraid that it may be said: You are asking us to disclose certain information. Here is this Bill which provides that for statistical purposes, certain information is to be furnished by a company. What objection can there be to enactment of a separate measure, and why should it be incorporated in the Income-tax Act? I personally have not been able to appreciate the grounds of objection. I still think that the Government of the country ought to have information of this type.

For these reasons, Sir, I would request the House to support this Motion for circulation of the Bill, and get the opinion of those commercial organisations and Provincial Governments and other public bodies who are best qualified to give their opinion on a Bill like this.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): I want to say one word, Sir. I do not understand the Honourable Mover of the original Motion. You cannot get any figures that are worth having out of this Bill. How are you going to deal with bearer securities? How are you going to deal with nominees? How are you going to deal with dividends and interest paid on blank transfers? It is quite a hopeless proposition, and I think that if we passed this Motion for circulation, we would simply be wasting public money.

THE HONOURABLE THE PRESIDENT: The Question is:

“That the Bill to provide for the submission of certain statements of companies incorporated or carrying on business in India be circulated for the purpose of eliciting opinion thereon.”

The Motion was negatived.

The Council then adjourned till Eleven of the Clock on Thursday, the 16th March, 1930.
