

13th February 1941

THE

LEGISLATIVE ASSEMBLY DEBATES

Official Report

Volume I, 1941

(11th February to 27th February, 1941)

THIRTEENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY, 1941



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Legislative Assembly

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Deputy President:

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MR. L. C. BUSS, M.L.A.

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SIR H. P. MODY, K.B.E., M.L.A.

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LEGISLATIVE ASSEMBLY

Thursday, 13th February, 1941.

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

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS

VALUE OF THE DOLLAR EXCHANGE.

43. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Finance Member be pleased to state the value of the dollar exchange which the Government or the Reserve Bank acquired since 1st November, 1940?

(b) In what manner do Government propose to use the dollar exchange?

(c) Have Government converted, or do they contemplate converting them to sterling securities? If so, why?

The Honourable Sir Jeremy Raisman: (a) I regret I cannot give information of this nature as its publication will be contrary to the public interest.

(b) and (c). Our surplus dollar resources are exchanged for sterling and added to the common Empire pool for payment for essential imports from the United States of America.

Sardar Sant Singh: Is it a fact that India has a credit of large sterling assets with the Secretary of State at present?

The Honourable Sir Jeremy Raisman: If the Honourable Member has been reading the newspapers lately, he will have learnt that India has now found a use for some 90 million pounds of these sterling assets.

CLASSIFICATION AND TREATMENT OF DETENUS AND PRISONERS.

44. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Home Member please state whether Government make any differentiation in the treatment of persons detained without trial, and persons committed to jail under the law of the land?

(b) How many classes of prisoners are there at present? What is the daily allowance given to each class of prisoners?

(c) Who places the prisoners in a particular class?

(d) Have the Government of India issued any instructions about the category of persons to be put in particular classes?

(e) Are the classes determined by the nature of the offenses or by personal equations of individuals?

(f) Do Government propose to request or make a rule that persons who voluntarily go to jail, may themselves pay the cost of their living and not tax the tax-payer of India?

The Honourable Sir Reginald Maxwell: (a) The treatment of persons detained under Rule 26 of the Defence of India Rules, who are known as Security Prisoners, is governed by the conditions prescribed by the Central or Provincial Government (as the case may be) under sub-rule (5) of that rule. The treatment of convicted prisoners is governed by rules framed by Provincial Governments under the Prisons Act. The conditions prescribed by the Central Government for the Security Prisoners in Deoli are contained in the Deoli Detention Camp Order, copies of which have been placed in the Library. Provincial Governments have framed their own Security Prisoners rules on the lines of that Order.

(b) There are three classes of convicted prisoners A, B and C and two classes of Security Prisoners I and II. No daily allowance is given to Security Prisoners, but those in Class I are allowed to receive up to Rs. 10 per month and those in Class II up to Rs. 5 per month from their friends.

(c) Security Prisoners are classified by the Government which prescribes the conditions of their detention. Recommendations for the classification of convicted prisoners are made by the Courts subject to confirmation or review by the Provincial Government.

(d) The main principles on which classification is to be made were laid down by the Government of India after discussion with Provincial Governments.

(e) In the case of convicted prisoners the status and antecedents of the prisoner and the nature of the offence are taken into account in making the classification. In the case of Security Prisoner classification is made according to the state of their health, and their education, status and mode of living before their arrest.

(f) No.

Mr. Lalchand Navalrai: With regard to detenus who are detained indefinitely, is there any rule or practice to revise their cases periodically for the purpose of release?

The Honourable Sir Reginald Maxwell: I do not think that arises out of this question.

Mr. N. M. Joshi: In view of the fact that there was a large volume of support for my resolution yesterday, will the Government of India reconsider their decision and appoint a committee as suggested by me?

The Honourable Sir Reginald Maxwell: No, Sir.

Qazi Muhammad Ahmad Kasmi: What were the standards by which Rs. 10 and Rs. 5 were fixed by Government?

The Honourable Sir Reginald Maxwell: They were decided in consultation with all the Provincial Governments at a conference.

Qazi Muhammad Ahmad Kazmi: Do Government think that is the maximum that a person in 'A' class requires and no more?

The Honourable Sir Reginald Maxwell: I have no doubt he could do with more but that is all we think fit to allow him.

Sardar Sant Singh: Are there uniform rules in all provinces governing the classification of prisoners?

The Honourable Sir Reginald Maxwell: Does the Honourable Member mean convicted prisoners?

Sardar Sant Singh: I mean those convicted under the Defence of India Act and Rules

The Honourable Sir Reginald Maxwell: Yes, Sir; the same principles are observed, as I said in answer to the question.

Sardar Sant Singh: Does the Honourable Member know that the Punjab Government have ordered all the members of the Provincial Assembly to be placed in "A" class? Is that rule observed in all other provinces?

The Honourable Sir Reginald Maxwell: No, Sir, it is not one of the principles of classification. Classification is based, as I said, on health, education, status and mode of living. And if all the members of the Punjab Legislative Assembly are of such high status that they deserve to be placed in class 'A', I am glad to hear it, but it does not necessarily follow that all the members in other provinces are of the same status.

Sardar Sant Singh: May I know if the Members of the Central Assembly are granted the same concessions after their conviction in the *Satyagraha* movement?

The Honourable Sir Reginald Maxwell: I am not aware how they have been classified.

Dr. Sir Ziauddin Ahmad: With regard to clause (f), if a person voluntarily wishes to go to jail in order to take rest and write books, will Government put him in a special class and support him at the expense of the tax-payers?

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

POST OF THE COLLECTOR OF CUSTOMS IN CALCUTTA.

45. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Finance Member be pleased to state whether Government have definitely decided that the Collector of Customs in Bengal will always be a Britisher?

(b) Did the Government of India receive any representation, officially or unofficially, that the Collector of Customs in Calcutta should always be a Britisher?

(c) Is it not a fact that postings at these offices are made as a matter of administrative convenience and not on any principle of racial discrimination?

(d) Has the attention of Government been drawn to the fact that administrative convenience in case of Calcutta has always been in favour of a Britisher?

(e) Will Government find out for how long an Indian has been a Customs Officer in Bombay?

The Honourable Sir Jeremy Raisman: (a) and (b). No.

(c) Yes.

(d) No.

(e) The post of Collector of Customs, Bombay, has been held by Indian officers since the 13th June, 1936.

INDIAN STATES MEN ADMITTED INTO THE INDIAN AIR FORCE OR THE INDIAN AIR FORCE RESERVE.

46. *Mr. Govind V. Deshmukh: (a) Will the Defence Secretary please state the names of the Indian States from which men have been admitted into the Indian Air Force, or into the Indian Air Force Reserve, and the number of men so admitted from such States into these Forces?

(b) Are they admitted on the same conditions of service as men from British India?

Mr. C. M. G. Ogilvie: (a) The figures required are not available since no separate records for Indian States are kept.

(b) Yes.

TREATMENT OF MONIES RECEIVED AS AN EQUIVALENT OF DOLLAR BALANCES WITH REFERENCE TO INCOME-TAX LAW.

47. *Mr. F. E. James: Will the Honourable the Finance Member be pleased to state:

(a) if monies received by residents in India in rupees as an equivalent for dollar balances held by them, which under Notification No. D.-5228-F., dated the 23rd November, 1940, issued by the Government of India under the Defence of India Act were made over to the Federal Reserve Bank of New York, will be treated as foreign income accruing *ex-India* or as income received in India for the purpose of income and super tax during the year in question; and

(b) if the latter, what is the Government of India's justification for so treating such income?

The Honourable Sir Jeremy Raisman: (a) and (b). I would invite the attention of the Honourable Member to the Press Communiqué issued on the 28th November, 1940, from which it will be seen that the sale proceeds in question are to be treated as capital receipts not liable to tax.

Press Communiqué.

By a notification issued by the Central Government on the 23rd November, under the Defence of India Rule owners of balances in the currency of the United States of America, with a few specified exemptions, required to offer such balances for sale to the Reserve Bank of India within one month, and the question has arisen whether the amounts received by them from the Reserve Bank will be liable to income tax. Having regard to all the circumstances attending such sales, it has been decided by the Government of India that for purposes of income and super-tax the sale proceeds should be treated as capital receipts not liable to tax.

FINANCE DEPARTMENT;

New Delhi, the 28th November, 1940.

Mr. F. E. James: Will the Honourable Member ensure that specific instructions to that effect are sent to Income-tax Officers, because already one or more Income-tax Officers to my knowledge have warned assesseees in a contrary direction?

The Honourable Sir Jeremy Raisman: Explicit instructions to that effect have already been communicated to Income-tax Officers. I can only assume that the action to which the Honourable Member refers was taken before the issue of those instructions.

Dr. Sir Ziauddin Ahmad: If any person changes this dollar exchange and gets rupees, will it be supposed to be his income and made taxable?

The Honourable Sir Jeremy Raisman: If the Honourable Member had read the question and heard my reply he would have seen that I have answered that precise question, namely, that in the case of these balances the rupee equivalent is treated as capital receipts not liable to tax.

INDIANS IN THE UNITED KINGDOM DESIROUS OF RETURNING TO INDIA.

48. *Mr. F. E. James: Will the Honourable the Home Member be pleased to state:

- (a) if he is aware that there are in the United Kingdom a number of Indians, students and non-students, who are desirous of returning to India, but who are unable to obtain the necessary passages, thus causing anxiety to their families in India; and
- (b) whether any steps have yet been taken, or are in contemplation, to facilitate the repatriation of such persons as are desirous of returning to this country?

The Honourable Sir Reginald Maxwell: (a) Yes. Government are aware that there are in the United Kingdom a certain number of Indians, who desire to come to India, but for whom shipping accommodation has not so far been available.

(b) I would draw the Honourable Member's attention to the Press Communiqués on this subject issued on July the 8th and September the 14th, copies of which I place on the table. The two ships referred to in the latter Communiqué reached India safely and as a result an appreciable number of Indian children were brought to India. Since then owing to the shortage of shipping it has not been possible to arrange for further special facilities for families or students. I regret that I am unable to say when such facilities will be resumed

Press Communiqué.

EVACUATION OF CHILDREN FROM BRITAIN —WHAT PARENTS IN INDIA SHOULD DO.

The Government of India and the Secretary of State for India have received a number of requests that arrangements should be made for the transport from the United Kingdom of the families of persons normally resident in India who wish to bring their children to India. Arrangements are therefore being made subject to the exigencies of the military situation and to the availability of shipping to facilitate the conveyance to India of the children of persons both official and non-official, European and Indian who normally reside in India and wish to bring their families out to this country. The Secretary of State has moved the Ministry of Shipping to give every assistance which it reasonably can in the matter of the early provision of transport.

Parents residing in India, who wish to bring their children from England to India should, therefore, instruct their representatives in the United Kingdom by cable to register the names of the children with the Secretary, Passage Department, India Office, as soon as possible.

It is likely that there may be a number of wives of men in India accompanying children, who will be willing to assist in looking after unaccompanied children during the voyage. The Secretary of State will, however, arrange for special supervisory staff if necessary.

The Government of India desire to make it clear that although they are prepared to give information and assistance so far as possible the decision to bring out children to India must be the entire responsibility of the persons concerned.

HOME DEPARTMENT;

Simla, the 8th July, 1940.

Press Communiqué.

In the Home Department Press Communiqué of the 8th July, 1940, it was stated that the Secretary of State had moved the Ministry of Shipping to give every assistance it reasonably could in providing early transport for the conveyance to India from the United Kingdom of the families of persons resident in this country. Some families have already arrived in India. Arrangements have also been made for two more ships conveying families to arrive in India sometime in the near future.

It is now notified for public information that in view of the shipping position the Secretary of State is unable to provide any special facilities for the conveyance of further families for the present.

In a Reuter message published in the Indian Press on the 7th July on the subject of arrangements for the evacuation of children from the United Kingdom to India, it was mentioned that in special circumstances advances to cover the cost of passages may be made by the India Office on an undertaking being given by the parents to refund the amount in due course. The procedure which has been actually adopted for Government servants has been that where the family in the United Kingdom of officers serving in India asked that the cost of passage should be recovered in India, the India Office arranged accordingly if evidence was produced of the officer's consent. Issue of advances is not necessary under this procedure.

HOME DEPARTMENT;

Simla, the 14th September, 1940.

DESIRABILITY OF BROADCASTING OF FIGURES FOR ALL VOLUNTARY
SUBSCRIPTIONS TOWARDS WAR EFFORT IN INDIA.

49. *Mr. F. E. James: Will the Honourable the Home Member be pleased to state:

- (a) if he is aware that the broadcasting in India and in the United Kingdom of the figures relating to His Excellency the Viceroy's War Purposes Fund only gives an incomplete

picture of the great volume of voluntary subscriptions towards the war effort which have been received throughout India; and

- (b) whether he is prepared to arrange in future for the total subscriptions relating to the Viceroy's War Purposes Fund and the various Provincial Governors' Funds and other voluntary funds, e.g., Red Cross, St. John Ambulance, etc., to be broadcast from time to time by All-India Radio and also by the British Broadcasting Corporation from London?

The Honourable Sir Reginald Maxwell: (a) The Government of India are not aware of the principles which are followed by the B. B. C. in selecting items of news regarding subscriptions to war funds, but steps will be taken to bring to the notice of the proper authorities in the United Kingdom the question asked by the Honourable Member. So far as India is concerned All-India Radio announces subscriptions to the Viceroy's War Purposes Fund and other war funds which are reported by Press Agencies and other authoritative sources.

(b) The suggestion will be considered.

The total of subscriptions to the Viceroy's War Purposes Fund is already being published and broadcast at regular intervals.

Mr. F. E. James: But the Honourable Member is no doubt aware that that gives an incomplete picture: there are large blocks of subscriptions, subscribed to Governors' provincial funds which do not pass through the Viceroy's War Purposes fund, and, therefore, in order to obtain a complete picture of the immense voluntary effort in the way of subscriptions in this country a consolidated statement of these amounts might be published from time to time: and I wonder whether the Honourable Member will consider compiling such a statement and issuing it from his department and placing it on the table of the House during the present Session.

The Honourable Sir Reginald Maxwell: At the present moment subscriptions to the various provincial and local war funds and other voluntary funds, when intimated by war committees and other such bodies, are regularly announced by all stations except Delhi. The information received in the Delhi station is passed on to the central news organisation for incorporation in the news bulletin.

Mr. F. E. James: Surely there is some one in the Delhi station or in some department of the Government of India capable of adding up all these contributions and presenting a consolidated statement which would present a much better picture than the isolated statements, however encouraging they may be, about the Viceroy's War Purposes Fund and the Governors' funds.

The Honourable Sir Reginald Maxwell: I will consider the Honourable Member's suggestion, but I would point out that these announcements of subscriptions are put into the news as news items; and if the procedure is adopted of obtaining the information some time afterwards and publishing consolidated tables, it will by that time have ceased to be an immediate news item.

Mr. F. E. James: May I suggest that there is a department of public information attached to the Government of India and is not that department interested in presenting a full picture,—that is all I am asking for—of the voluntary effort in this connection of this country? There might be at least one officer in that department able to collect all these figures together and present a consolidated statement for broadcasting from the All-India Radio?

The Honourable Sir Reginald Maxwell: I will certainly see whether anything can be done in the direction suggested by the Honourable Member.

Qazi Muhammad Ahmad Kazmi: Will the Honourable Member also consider the suggestion that he must also publish the figures for involuntary subscriptions—subscriptions that are collected through local bodies by pressure from the Government?

The Honourable Sir Reginald Maxwell: It is for the Honourable Member to furnish Government with particulars of such amounts.

Dr. Sir Ziauddin Ahmad: May I ask this question? I wrote to His Excellency the Viceroy and to the Finance Member. We should like to know the contributions of each province for war purposes—the total amount of war loans with interest and without interest, contributions to the Viceroy's fund and to the Governor's fund and to the ambulance societies and other such measures. We should like to know the total contributions of each province and also under different heads. This information is very important, and I think it should be gathered together and published either as a statement in reply to a question which I have already put, or otherwise.

The Honourable Sir Reginald Maxwell: I thank the Honourable Member for his suggestion, and, as I have already said, I will consider whether anything useful can be done on those lines.

INDIAN PRISONERS OF WAR.

50. ***Mr. Govind V. Deshmukh:** Will the Defence Secretary please state:

- (a) if any Indians have been taken as prisoners of war by the Nazi army or Fascist army, and what treatment they are receiving;
- (b) if Italian prisoners of war get only reciprocal treatment that is neither better nor worse than Indian prisoners of war are receiving;
- (c) whether the Government of India have to bear the expenses of looking after these Italian prisoners of war, either wholly or partly; and

- (d) whether there has been any exchange of Indian prisoners of war for the Italian or German prisoners of war?

Mr. C. M. G. Ogilvie: (a) and (b). A statement showing the number of Indians so far known to have been taken prisoners of war, and the number missing, believed to be prisoners of war, has been laid on the table. As far as we are aware, these prisoners are being treated in accordance with the International Convention relative to the treatment of Prisoners of War, 1929, (of which Germany and Italy are signatories).

Italian prisoners of war are being treated in accordance with the same International Convention

(c) The cost of maintaining Italian prisoners of war is wholly debitable to His Majesty's Government.

(d) No, Sir.

Statement.

The following Indian personnel have been reported as prisoners of war and missing, believed prisoners of war :

Prisoners of war.

Sudan.—

- 1 Officer (Lieutenant Shaukat Hayat Khan).
- 1 Indian Other Rank.

France.—

- 1 Officer (Captain Anis Ahmed Khan).
- 2 Viceroy's Commissioned Officers.
- 7 Indian Other Ranks.
- 2 Non-combatants.

Missing, believed Prisoners of war.

Sudan.—

- 1 Viceroy's Commissioned Officer.
- 1 Indian Other Rank.

France.—

- 4 Viceroy's Commissioned Officers.
- 247 Indian Other Ranks.
- 63 Non-combatants.

Mr. Govind V. Deshmukh: May I know if the son of Sir Sikandar Hayat Khan is being given the same treatment—I think he is a war prisoner—according to the International Convention, whether he has got a bungalow for living, whether he is getting about three or four hundred rupees as monthly allowance, whether he is put on any work for the Government or not? Have Government made any inquiry about this?

Mr. C. M. G. Ogilvie: I have given in the answer to the question all the information which we know about the treatment of prisoners.

Mr. Muhammad Nauman: What is the number of German prisoners and Italian prisoners who are in India at the moment?

Mr. C. M. G. Ogilvie: We have no German prisoners in India. There are a good many thousands of Italian prisoners—I have not got the exact figures.

Maulana Zafar Ali Khan: What is the total number of Indian prisoners taken by the Germans and the Italians?

Mr. C. M. G. Ogilvie: The Italians have been fortunate enough to capture 4. The Germans have, I think, 247 Indian other ranks, 4 Viceroy's commissioned officers and 63 non-combatants.

Mr. N. M. Joshi: May I ask whether the International Convention makes any discrimination between white prisoners and non-whites?

Mr. C. M. G. Ogilvie: No.

Mr. Lalchand Navalrai: Are these prisoners taken by the Germans treated well, and are the Government of India doing anything with regard to them?

Mr. C. M. G. Ogilvie: I have given all information which we have. We have no information to show otherwise; but information is very slow in coming from Germany and it is only within the last two or three days that we have actually received information that some 270 Indian persons are in a certain German camp. Before that, we did not know for certain whether they were prisoners of war or not.

Mr. Govind V. Deshmukh: May I know what exactly the Italian officers are getting by way of allowances and accommodation and whether they are put to any work by the Government?

Mr. C. M. G. Ogilvie: They are not put to any work. As regards their accommodation and allowances I shall require notice.

PERCENTAGE RESERVED FOR MUSLIMS FOR CERTAIN APPOINTMENTS IN THE ARMY HEADQUARTERS.

†51. ***Sir Abdul Halim Ghuznavi:** (a) Will the Defence Secretary be pleased to state what percentage has been laid down in any general orders

† Answer to this question laid on the table, the questioner being absent.

on the subject, for Muslims, as regards the following appointments in the establishment of the various Branches of Army Headquarters in India:—

- (i) Officers Supervisor;
- (ii) Superintendents;
- (iii) Assistants First Division; and
- (iv) Routine Grade clerks?

(b) How many of the above appointments in each category are actually held by Muslims at present and how many by individuals belonging to other communities? What is the percentage in each class held by the Muslim community?

(c) What is the percentage laid down by Government for Muslims for the abovementioned posts, and is that percentage being maintained in the Army Headquarters? If not, why not?

(d) When will it be possible for Government to give the Muslim community their due share, if they have not done in these days of war when the size of the Army Headquarters offices has practically doubled?

(e) Will the Defence Secretary also be pleased to state how many posts in the abovementioned categories were created since the outbreak of the war, and were the orders of the communal ratio applied in filling them up? If not, why not?

Mr. C. M. G. Ogilvie: (a) (i), (ii) and (iii). None. (iv) 25 per cent.

(b) A statement is laid on the table.

(c) (i), (ii) and (iii). None. (iv) 25 per cent. Yes, the orders are being observed.

(d) Does not arise.

(e) The reply to the first part is as follows:

- (i) 23.
- (ii) 31.
- (iii) 14.
- (iv) 422.

The reply to the second part is in the affirmative as far as category 4 is concerned. The first three categories are filled by selection and the communal proportion does not apply to them.

	Muslims.	Other communities.	Percentage.
(i)	1	37	2·6
(ii)	5	57	8
(iii)	15	154	8·8
(iv)	101	373	21·3

RACIAL DISCRIMINATION IN THE MATTER OF EMOLUMENTS ADMISSIBLE TO EMERGENCY COMMISSION OFFICERS.

52. *Sardar Sant Singh: (a) Will the Defence Secretary please state whether it is a fact that European British subjects and Indian British subjects granted emergency commissions in India in the Indian Army for the present war are allowed different emoluments (as noted in the statements marked A and B, respectively set out below) excluding certain allowances common to both, and that differential treatment continues even when they are detailed to Field Service overseas? Is this difference in emoluments based on the assumption that the Indian officer holding the same status and rank and fighting side by side with his European colleagues, even overseas, should get less because his manner of living should be cheaper?

(b) Are Government aware that this inferior treatment is all the more galling in respect of Indian officers holding responsible civil appointments, and is contrary in actual practice to the statements of the most responsible officers of the Government, from the Secretary of State downwards, that equality of treatment is being extended to Indians in the war?

(c) If the above facts are correct, do Government propose to remove this racial discrimination?

A.

Statement showing emoluments admissible to officers (European British Subjects) granted Emergency Commissions in the Indian Army [Annexure II to Army Instructions (India) No. 12 of 1940.]

Rank.	Rank pay.	I. A. allowance.	Marriage allowance.	Lodging allowance.	Total.
	Rs. p. m.	Rs. p. m.	Rs. p. m.	Rs. p. m.	Rs. p. m.
Lieutenant-Colonel	1,225	100	75	150	1,550
Major (after 22 years service)	1,035	100	90	110	1,335
Major	915	100	90	100	1,205
Captain (after 15 years service)	765	75	100	90	1,030
Captain (after 14 years service)	765	50	100	70	985
Captain (after 11 years service)	655	50	100	70	875
Captain	555	50	100	70	775
Lieut. (after 7 years service)	505	50	65	50	670
Lieut. (after 6 years service)	505	40	65	45	655
Lieutenant	435	40	65	45	585
Second Lieutenant	385	40	65	40	530

B.

Statement showing emoluments admissible to officers (Indian British Subjects) granted Emergency Commissions in the Indian Army (Annexure to Army Instructions (India) No. 13* of 1940).

Rank.	Consolidated Pay.
	Rs.
Lieutenant-Colonel	1,000
Major	800
Captain (after 8 years service)	650
Captain (after 6 years service)	600
Captain (after 4 years service)	550
Captain (after 2 years service)	500
Captain	450
Lieutenant (after 3 years and 9 months service)	400
Lieutenant	350
Second Lieutenant	300

*Army Regulations, India.

Pay and Allowance Regulations for the Army in India, Chapter V, Rule 181.

Mr. O. M. G. Ogilvie: (a) and (b). The figures given by the Honourable Member are substantially correct except that in addition to the emoluments shown by the Honourable Member, Indian Commissioned Officers now receive an emergency allowance of between Rs. 65 and Rs. 50 a month when in India; and when serving overseas an expatriation allowance, which differs according to the various circumstances and according to the country in which the officer is serving, but is slightly more liberal than the emergency allowance. Second Lieutenants and Lieutenants also receive a messing allowance of Rs. 40 and 15 respectively.

The difference in emoluments continues when both are on field service. It is not due to the reasons suggested by the Honourable Member but to the fact that the pay of Indian Commissioned Officers of the Indian Army was originally intended to approximate to that of the British Service. It has, however, been improved and I lay upon the table a statement showing the rates of pay which an officer of the British Service in the Middle East would get in typical circumstances compared with those of an Indian Commissioned Officer. It will be seen that the Indian Commissioned Officer is better paid in all ranks and in addition he has to pay much less income-tax. For example, a British Service Second Lieutenant (unmarried) draws Rs. 290 per mensem and an Indian Second Lieutenant (also unmarried) Rs. 410.

(c) There is no racial discrimination.

Comparative statement showing the rates of pay and allowances admissible to British Service Officers of the Home Establishment and Indian Commissioned Officers serving in Middle East and accommodated and fed at Government expense.

Indian Commissioned Officers.

British Service Officers.

Rank.	Pay of rank converted at 1s. 6d.	Colonial		Family		Total	Rank.	Pay of rank.	Expat. alloe.	Total single.	Sep. alloe.	Total married.
		alloe.	single.	alloe.	married.							
Lt.-Col	Rs. 860	Rs. 70	Rs. 930	Rs. 190	Rs. 1,120	Lt.-Col.	Rs. 1,000	Rs. 70	Rs. 1,070	Rs. 120	Rs. 1,190	
Major (32)	670	70	740	150	890	Major (22)	800	70	870	85	955	
Major	570	70	640	150	790	Major	800	70	870	80	950	
Captain (14)	470	70	540	150	690	Capt. (8 yrs. as such)	650	70	720	60	780	
Captain (11)	380	70	450	150	600	Capt. (6 yrs. as such)	600	70	670	50	720	
Captain	330	70	400	150	550	Capt. (4 yrs. as such)	550	70	620	50	670	
Lieut. (6)	290	70	360	120	480	Capt. (2 yrs. as such)	500	70	570	50	620	
Lieut	260	70	330	120	450	Captain	450	70	520	50	570	
2nd Lieut..	220	70	290	120	410	Lieut. (3 yrs. & 9 mths. as such)	400	70	470	40	510	
						Lieutenant	350	70	435	40	475	
						2nd Lieut.	(a) 300 plus 40 (b)	70	410	40	450	

(a) Rs. 15 messing allowance which is granted even when free rations are given.

(b) Rs. 40 messing allowance which is granted even when free rations are given.

Sardar Sant Singh: May I know if any allowance is paid to Indian officers when they are serving in Egypt?

Mr. C. M. G. Ogilvie: Yes, I have said that.

Sardar Sant Singh: What is the rate of allowance there?

Mr. C. M. G. Ogilvie: The expatriation allowance in Egypt is Rs. 70.

Sardar Sant Singh: What is it in the case of British officers there?

Mr. C. M. G. Ogilvie: British officers also receive Rs. 70 in Egypt.

Dr. R. D. Dalal: Is it a fact that Indians resident in England have been given exactly the same facilities for enlistment in all fighting services as are extended to volunteers from the Dominions?

Mr. C. M. G. Ogilvie: Yes, Sir.

Lieut.-Colonel M. A. Rahman: Do Indian officers when they go overseas get any overseas allowance?

Mr. C. M. G. Ogilvie: Yes, they get what is called an expatriation allowance.

Mr. M. S. Aney: Are both allowances treated on the same scale?

Mr. C. M. G. Ogilvie: In the cases of British officers and Indian Commissioned officers it is called expatriation or Colonial allowance, and the scale is the same.

DECLARATIONS FOR INCREASING THE NUMBER OF INDIANS IN THE ARMY.

53. *Mr. Lalchand Navalrai: (a) Will the Defence Secretary be pleased to state if it is a fact that His Excellency the Commander-in-Chief declared in his broadcast speech last year that Indians will be given their full share and will be taken in increased numbers in the Army?

(b) Is it a fact that it was announced by Government that new formations will be officered to the fullest extent possible by Indians?

(c) If the answer to part (a) or (b) above be in the affirmative, will the Defence Secretary be pleased to state if these declarations have been given effect to? If so, how and to what extent has the number of Indian officers been increased?

(d) If any such action has been taken, is it for war purposes, or permanently?

(e) Is it a fact that sometime ago about 370 Europeans were trained as officers and were under training at Bangalore, and will the Defence Secretary please state if any Indian officers have been trained there or are under training? If not, why not?

(f) How many Indians from Dehra Dun have been recruited as officers since the commencement of the war and what number of officers is under training there now?

(g) How many Indian officers have been recruited specially in connection with the war?

Mr. O. M. G. Ogilvie: (a) Yes.

(b) It has not been possible to trace this statement.

(c) Yes. No Indian candidate who was considered likely to make a good officer has been refused.

(d) At present all new commissions are emergency commissions.

(e) Yes. The answer to the second part of the question is in the negative and the reason is that the courses are not altogether the same. It is, however, possible that at some future time it may be found convenient to mix British and Indian cadets both at Mhow and Bangalore.

(f) 216 Indians from Dehra Dun have been given commissions since the beginning of the War, and 128 are at present under training there.

(g) All recruitment of officers at present is in connection with the war. The number of Indian Officers recruited since the beginning of the war is 1752.

Mr. Lalchand Navalrai: With regard to clause (a), may I know what is meant by a full share to be given to Indians?

Mr. O. M. G. Ogilvie: Am I expected to define the term 'full share'?

Mr. Lalchand Navalrai: Is it that all appointments will be given to Indians?

Mr. President (The Honourable Sir Abdur Rahim): Full share is used in the question itself.

Mr. Lalchand Navalrai: I am asking what is meant by saying that full share will be given to Indians.

Mr. O. M. G. Ogilvie: I have no idea what the Honourable Member means by a full share.

Mr. Lalchand Navalrai: Is it that the same percentage of employment will be given to Indians?

Mr. O. M. G. Ogilvie: All I can say is that no suitable officer who was considered likely to make a good officer has been turned away. I think that probably will satisfy the Honourable Member.

Mr. Lalchand Navalrai: How many have been taken?

Mr. O. M. G. Ogilvie: I have given the answer to that.

Mr. Lalchand Navalrai: May I also know that under some Indianisation scheme a few educated Indians were or are being trained at Chaklala workshops for 5 or 6 years to replace the B. O. R's?

Mr. C. M. G. Ogilvie: I cannot see that that arises out of this question.

Mr. Lalchand Navalrai: May I know how many people from the Chaklala training centre have been given Commissions?

Mr. C. M. G. Ogilvie: I should require notice of it.

Lieut.-Colonel M. A. Rahman: In view of the fact that there are some European cadets under training with other Indians at Mhow, will the Honourable Member consider the feasibility of mixing both together at the various centres as quickly as possible?

Mr. C. M. G. Ogilvie: I have said that as soon as it is found convenient to do so, that will be considered. In regard to the mixing of both classes of cadets, the difficulty consists in the fact that there are differences in the courses. It is hoped that this can be overcome. More I cannot say at this moment.

Dr. R. D. Dalal: In view of the fact that European cadets have had preliminary military training, it would seriously complicate the training syllabus of the officers' training schools at Bangalore and Belgaum if Indians are admitted to those schools, and is it a fact that fine institutions like the Indian Military Academy at Dehra Dun and the Officers' Training School at Mhow exist for the training of Indians?

Mr. C. M. G. Ogilvie: Yes, these institutions do exist at present for the training of Indian officers, but the difference in courses is due not to the fact that some or most of the British cadets have had some preliminary military training. It is almost entirely a matter of instruction in the language.

Qazi Muhammad Ahmad Kasmi: Will the Honourable Member please enquire from His Excellency the Commander-in-Chief the meaning of the term "full share" that will be given to Indians?

Mr. C. M. G. Ogilvie: I cannot add anything more to what I have already said, that no Indian candidate who was considered suitable was refused.

RECRUITMENT OF NON-MARTIAL CLASSES IN THE ARMY.

54. *Mr. Lalchand Navalrai: Will the Defence Secretary be pleased to state if Government have abolished their policy, which was of long standing and was objected to by Indians, of recognising martial and non-martial classes? If so, have any people who were formerly classed as non-martial been recruited in the army and also appointed as officers? If so, how many and from which Provinces, including Sind?

Mr. C. M. G. Ogilvie: Government have never had any such policy. The Honourable Member is referred to my answer to Mr. G. V. Deshmukh's starred question No. 169 of 19th November, 1940, for an exposition of the position and also to the answers to the following questions:

Sardar Harbans Singh Brar's question No. 707 of 14th April, 1934.

Rai Bahadur Lala Jagdish Prasad's question No. 66 in the Council of State of 7th March, 1935.

Mr. Ram Narayan Singh's question No. 984 of 21st March, 1935.

The Honourable Member's own question No. 13 of 2nd September, 1935.

Mr. Ram Narayan Singh's question No. 725 of 22nd September, 1937.

As regards figures, I refer the Honourable Member to those given in the statement laid on the table on November 7th, 1940. It is not in the public interest to bring these up to date.

Mr. M. S. Aney: When did the Honourable Member take charge of the office of Defence Secretary?

Mr. C. M. G. Ogilvie: It was in 1937, but I possess the previous records.

Mr. Lalchand Navalrai: May I know if the Honourable Member denies the fact that there was a time when Government took people only from what is called the martial classes and rejected those that did not belong to these classes?

Mr. C. M. G. Ogilvie: I deny it absolutely. Government have repeatedly explained in this House that they never regarded the terms martial and non-martial as possessing any meaning at all. They have been coined entirely by politicians.

Mr. Lalchand Navalrai: Is it a fact that people are being recruited only from certain provinces and not from all provinces?

Mr. C. M. G. Ogilvie: The army, as has been repeatedly explained, is normally kept at a certain size, and of course it grows in time of war, but it is Government's policy to choose to enlist those classes who have shown by experience to provide the best bulk supply of military material.

Mr. Lalchand Navalrai: Is that policy of choosing still going on or has it been abandoned?

Mr. C. M. G. Ogilvie: No, Sir. Even in wartime we prefer the best.

PROGRESS IN THE MECHANIZATION OF THE INDIAN ARMY.

55. *Mr. Lalchand Navalrai: Will the Defence Secretary be pleased to make a full statement as to the progress made in the mechanization of the Indian Army and state the number of Europeans, Eurasians and Indians trained in it and of those under training?

Mr. C. M. G. Ogilvie: It would not be in the public interest to disclose the details of the progress so far made in the mechanisation of the Indian Army. I may add for the information of the Honourable Member that units, not classes or individuals, are trained in mechanized warfare.

Mr. Muhammad Nauman: May I know if the Honourable Member can at least tell us that it is going to be on the same lines as in the United Kingdom or other parts of Europe?

Mr. C. M. G. Ogilvie: On the same lines? I hope, Sir, even on better lines.

Qazi Muhammad Ahmad Kazmi: Are any Indians included in the mechanised army?

Mr. C. M. G. Ogilvie: Yes, Sir. A large number.

Qazi Muhammad Ahmad Kazmi: Can the Honourable Member, without any danger of disclosure, tell us as to the proportion of Indians in the mechanised army as compared to Europeans?

Mr. C. M. G. Ogilvie: No, Sir. All I can say is that the mechanisation of the Indian army is progressing as favourably and well as could possibly have been expected.

Mr. Lalchand Navalrai: May I know if a considerable number of Indians have been taken for this mechanisation?

Mr. C. M. G. Ogilvie: People are not taken for mechanisation. Units of the army, battalions, batteries and regiments, are mechanised.

Mr. Lalchand Navalrai: Is it a considerable number?

Mr. C. M. G. Ogilvie: Yes. It is a very considerable number.

RECRUITMENT FOR THE NAVY FROM THE CENTRAL PROVINCES AND BERAR.

56. ***Mr. Govind V. Deshmukh:** (a) Will the Defence Secretary please state if any men were recruited last year from the Central Provinces and Berar for the Navy? If so, how many?

(b) Is any of them at present an officer?

Mr. C. M. G. Ogilvie: (a) and (b). Yes. One Officer and nine ratings.

Mr. Govind V. Deshmukh: How many were recruited?

Mr. C. M. G. Ogilvie: That is the answer I have given. One officer and nine ratings.

RECRUITMENT FOR THE INDIAN ARTILLERY.

57. ***Mr. Govind V. Deshmukh:** Will the Defence Secretary please state:

(a) if there was any direct recruitment for the Indian artillery last year;

(b) if any men from the Central Provinces and Berar were recruited for it; if so, how many; and

(c) if there were any Mahrattas and Maharashtra Brahmins amongst those recruits; if so, how many?

Mr. C. M. G. Ogilvie: (a) and (c). I refer the Honourable Member to the answer given to part (e) of his own starred question No. 160 of 19th November, 1940.

(b) Yes, 13 men.

Mr. M. S. Aney: No additions were made after that date?

Mr. C. M. G. Ogilvie: I think not.

Mr. F. E. James: Thirteen from the Central Provinces and Berar. Of this how many came from Berar, and from Berar how many came from Amraoti?

Mr. C. M. G. Ogilvie: I should be glad to have notice of that question.

PAY AND ALLOWANCES GRANTED TO SEVERAL GRADES OF THE COMMISSIONED OFFICERS.

58. *Dr. Sir Ziauddin Ahmad: (a) Will the Defence Secretary please lay on the table a statement showing the pay and all allowances granted to the several grades of the commissioned officers (both permanent and emergency)?

(b) Is there any difference between the pay and allowances in the case of (i) Indians and non-Indians, and (ii) Indians and Anglo-Indians? If so, why?

Mr. C. M. G. Ogilvie: (a) The pay and allowances of the several grades of permanent commissioned officers are contained in Pay and Allowance Regulations for the Army in India, copies of which are in the Library of the House.

The pay and allowances of the several grades of emergency commissioned officers are laid down in Army Instructions (India) Nos. 12, 13 and 845 of 1940, copies of which are in the Library of the House.

(b) (i). Yes. I refer the Honourable Member to the answer I have just given to question No. 52.

(ii) No.

ARRANGEMENTS FOR DEFENCE OF INDIA.

59. *Mr. Amarendra Nath Chattopadhyaya: (a) Will the Honourable the Home Member be pleased to state what arrangements have been made for defence of India in case of any attack by outsiders;

(i) by air,

(ii) by sea,

(iii) by land?

(b) How many anti-aircraft guns have already been actually in existence, and how many may come to exist after being manufactured in Indian Workshops within the next six months from date?

(c) What arrangements have been made for adequate measures of protection against aggression by sea?

(d) What arrangements have been made for the manufacture of aeroplanes in India for air fights in India?

Mr. C. M. G. Ogilvie: (a) to (d). It is not in the public interest to answer these questions.

Qazi Muhammad Ahmad Kasmi: Have arrangements been made for the defence of India in cases of any attack by outsiders? Is it admitted or not?

Dr. P. N. Banerjee: Have any arrangements been made?

Mr. C. M. G. Ogilvie: Certainly.

Maylvi Abdur Rasheed Chaudhury: May I know if there is any arrangement regarding Assam?

Mr. C. M. G. Ogilvie: Does not arise.

60. ***Mr. Amarendra Nath Chattopadhyaya:** I do not put question No. 60.

NATIONAL DEBT OF INDIA.

61. ***Mr. Amarendra Nath Chattopadhyaya:** Will the Honourable the Finance Member state the amount of National Debt of India as it stands at present, giving:

- (i) details of causes that led to the raising of such debts;
- (ii) time of loan raised;
- (iii) amount of loan raised;
- (iv) occasion for raising loan;
- (v) rates of interest; and
- (vi) total interest paid on the amount of national debt?

The Honourable Sir Jeremy Raisman: The information required by the Honourable Member will be found in the Finance and Revenue Accounts, copies of which are available in the Library of the House, in the Return of the Rupee Debt of the Central Government of India which is published every month in the Gazette of India and in the statement laid on the table of the Council of State by Sir Alan Lloyd on the 14th April, 1939, in reply to Question No. 283.

SINKING FUND FOR PAYMENT OF INDIA'S NATIONAL DEBT.

62. ***Mr. Amarendra Nath Chattopadhyaya:** Will the Honourable the Finance Member please state if there is any sinking fund created to pay off India's National Debt? If so, will he state the present amount of the sinking fund? Or is a simple system of conversion loan adopted for payment of loan?

The Honourable Sir Jeremy Raisman: The attention of the Honourable Member is invited to accounts Nos. 42 and 99 of the Finance and Revenue Accounts, copies of which are available in the Library.

DESIRABILITY OF TRANSFORMING THE FEDERAL COURT INTO THE PRIVY COUNCIL OF INDIA.

63. *Mr. Amarendra Nath Chattopadhyaya: Will the Honourable the Home Member please state if the Federal Court would be transformed into the Privy Council of India in view of the present war crisis?

The Honourable Sir Reginald Maxwell: Presumably the Honourable Member has in mind the question of extending the appellate jurisdiction of the Federal Court to cover appeals from the decisions of High Courts in certain civil cases. The matter is under consideration.

Mr. M. S. Aney: Is it a fact that the Government of India are proposing to introduce legislation in this House for the purpose of enabling litigants to file certain kinds of appeal in the Federal Court?

The Honourable Sir Reginald Maxwell: I have said that the matter is under consideration. Whether legislation is introduced or not will depend on the decision reached.

UNSTARRED QUESTION AND ANSWER.

INCOME, EXPENDITURE, ETC. OF THE ALLAHABAD CANTONMENT BOARD.

6. Qazi Muhammad Ahmad Kazmi: Will the Defence Secretary please state:

- (a) the income and expenditure of the Allahabad Cantonment Board during the last five years, and the amount of the reserve fund during that period;
- (b) the amount collected from water-tax from the residents of the Cantonment area and the amount spent on water supply, excluding the "entitled consumer" during the last five years by the Allahabad Cantonment Board;
- (c) when the areas now occupied by Baghara, New and Old Lascar Lines, Kydgunj and Ghalla Bazar, were acquired by the Military authorities, from whom they were acquired and on what terms;
- (d) if they were purchased, what the consideration paid for them was; and
- (e) if they were not separately acquired but were acquired as a part of a larger area, what that area was and what the consideration paid for the whole was and on which date or in which year the acquisition was made?

Mr. O. M. G. Ogilvie: I am collecting the information and will lay it on the table in due course.

THE MUSLIM INTESTATE SUCCESSION BILL.

Nawab Siddique Ali Khan (Central Provinces and Berar: Muhammadan): Sir, I move:

"That the Bill to declare that properties of a Muslim dying intestate and without any heir devolve upon the Muslim Community be continued."

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

"That the Bill to declare that properties of a Muslim dying intestate and without any heir devolve upon the Muslim Community be continued."

The motion was adopted.

THE INDIAN RAILWAYS (AMENDMENT) BILL.

Mr. Muhammad Ashar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, I beg to move:

"That the Bill further to amend the Indian Railways Act, 1890, for certain purposes, (insertion of new section 135A), be taken into consideration."

The grounds for moving this motion are mentioned in the Statement of Objects and Reasons.

"The Indian Railways Act, 1890, came into force on the 1st day of May, 1890, and the Schedule Taxes Rules were published in December, 1920, under which the local authorities were empowered to levy a tax on buildings, trades, professions, callings and in return for services rendered. The Secretary, Railway Board, in a letter No. 62-F./17, dated the 5th June, 1922, exempted all subordinate staff of railways, irrespective of their pay, from payment of all taxes (except electric power lighting charges) whether the services are rendered by the railway or by a municipality. But the Local Self-Government Department of the United Provinces held that the liability of railway employees to circumstances and property tax levied by District Boards is not affected by the said exemption. Consequently the District Boards have imposed that tax by assessing the remunerations of a railway employee paid for the service under the railway, which is in fact nothing less than an income-tax in disguise. The anomaly has caused great confusion, harassment and hardship. Thus legislation is considered necessary"

The facts are that the gazetted officers of the railways, who are highly paid officials, reside mostly in places where there are municipalities and big stations and the lower staff of the Railway Department mostly resides near the small stations, rather in the compounds of the small stations. This district board tax is not levied on the superior staff of the railway but it is imposed on the poorer staff of the railway, who reside within the precincts of the railway compound and, therefore, the ordinary pay of these people who may be called and are generally known as cabin men, porters etc. is taxed by the district board and the station master, unless his pay is less than Rs. 90, is not allowed to remain in the small station and those who get pay above Rs. 90 are mostly stationed in places where there is a municipal tax and not the district board tax. My object in moving this amendment is not that the district boards or any local boards should be deprived of any tax which they can collect from these people on circumstances and property. My object in moving this Bill is this. As the Government of India by its notifications which are published in the *Gazette of India* makes exemptions in the cases of several municipalities and also of district boards, they should make an exemption in the case of these lower staff of the Railway Department. If these people who are drawing pay less than Rs. 90 have to remain in small stations, then, it is rather too much for the Government or the local boards to tax these people. My object is that the district board should not levy a tax on these small people, who live in small stations. I may refer here to the Government Gazette of the 24th March, 1934, Notification No. 9220-F which says:

"In pursuance of sub-section (1) of section 135 of the Indian Railways Act, 1890 (IX of 1890), the Governor General in Council is pleased to declare that the administration of the Assam Bengal Railway shall be liable to pay in aid if the funds of the local authority set out in the first column of the schedule annexed hereto the tax specified in the second column thereof."

Schedule.

Local Authority
Habiganj Municipality

Tax
Rate on holdings."

[Mr. Muhammad Azhar Ali.]

In the same manner, on page 380 of the *Gazette of India*, dated the 17th March, 1934, there are two notifications; one is No. 9112-F, exempting Burdwan and the other is No. 9211F exempting Thakurkona and Singherbangla from the union rates. In the same manner again the Government of India exempted the local authority of Ravanasamudram Panchayat by their notification No. 2857F, dated the 27th February, 1934. Likewise, on the 27th January, 1934, by Notification No. 9136F, the Manamadura and Tirupuvanam Panchayats were exempted by the Government of India itself.

Therefore, the Government of India has got power to exempt these low paid staffs from taxes of district boards. Then why not legislate for the exemption of the railway staff situated in the precincts of the railways generally. My object in moving this motion is to give relief to the inferior, not to the superior, staff. When the Railway Departments apply to the Central Government, they get exemption in certain places from the imposition of taxes on inferior servants, as I have shown from the *Gazette*. My aim here is to introduce a new provision in the Railways Act, section 135A which will be as follows:

"135A. A railway servant holding an appointment in the ranks (superior or inferior) of non-gazetted establishment of a railway shall not be liable to pay any tax on circumstances and property, while ordinarily residing or carrying on business in the railway, in aid of the funds of any local authority:

Provided that such railway servant has no other means on circumstances and property than the service under the railway, and that the burden of proof of such other means for the assessment of any tax in aid of the funds of any local authority shall be on the local authority."

Now, Sir, the point is that this tax is levied on circumstances and property. I ask what circumstances these poor railway servants have except their pay. I say none. What property do they hold on the railway station. None. Under these circumstances if they are liable to pay tax on property, it will be a hardship. These people own no property in the railway station and moreover they are transferred from place to place. What will be the condition of these people if they are subjected to this tax; either from their pay it is deducted or in respect of this tax they have attachments. I trust that the Railway Department will accept my amendment and give relief to these poor servants of the Railway. I do not ask anything for the superior staff. I do not ask for anything which is unreasonable. It is only for the poor people on the Railway Department that I am moving this Bill. With these words, I move.

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

"That the Bill further to amend the Indian Railways Act, 1890, for certain purposes (insertion of new section 135A), be taken into consideration."

There is an amendment to this motion in the name of Maulvi Muhammad Abdul Ghani. Does he wish to move it?

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Yes, Sir, I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon, and be published in the Railway Administrations' Gazettes for opinion of railway servants by the 31st August, 1941."

Sir, the Bill relates to certain employees of Railways. We are quite in the dark whether it really affects them or not. Therefore, it is desirable that the House should have some information of the opinions of these people whom the Bill affects. I have, therefore, thought it proper to move this motion and I hope the House will accept it.

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

"That the Bill be circulated for the purpose of eliciting opinion thereon, and be published in the Railway Administrations' Gazettes for opinion of railway servants by the 31st August, 1941."

The debate will now proceed on both the original motions and the amendment.

The Honourable Sir Andrew Clow (Member for Railways and Communications): Sir, I am afraid the Honourable Member who moved the consideration of this Bill is in error both as regards the law and as regards the facts; and I am not at all surprised that the Honourable speaker who followed him said that he was in the darkness about it. There is a good deal of darkness about it.

The first point which I would ask the House to bear in mind is that even if they pass this Bill, it will be entirely ineffective for the purposes the Honourable the Mover has in view. This House has no power to exempt servants of the Central Government or anyone else from provincial taxation, and the provisions of the Bill would certainly be held to be *ultra vires* if any case arose, so that really the whole point of the Bill goes at the start. There is no such power to exempt. I am afraid that Mr. Azhar Ali was perhaps misled by the Railway Board itself because he refers in his Statement of Objects and Reasons to an exemption and he referred in his speech to that exemption granted by the Railway Board a considerable number of years ago. Well, I believe the Railway Board at that time were themselves in a little obscurity as to the effect of the reforms of 1920, but they soon discovered that the exemption fell on themselves and that they could not exempt in the sense of depriving Provincial Governments or the local bodies of taxation. What they are actually doing at the moment in respect of the exemption is that they are paying the tax themselves, and I would call attention to the fact that they are paying the tax for subordinates and not for the gazetted officers. My Honourable friend tried to suggest to the House that there was some great distinction here between the poorer classes of railway servants and the better ones. So there is, but the distinction is that it is the subordinates who get this exemption and not the gazetted officers. Actually, neither this House nor the Railway Board can grant an exemption from taxation of this kind.

I listened carefully to my Honourable friend's speech but I failed to discover a single reason why the local bodies should be deprived of the tax, or why railway servants should be placed in a privileged position in comparison with other men, just as poor, just situated as themselves. These taxes are levied in order to provide certain facilities. There is no obvious reason why a railway servant, just because he is a railway servant, should be exempt from the tax. It would merely be one way of increasing his pay at the expense of the local body if in fact the Bill could be effective; as I have said earlier, it cannot be effective for the purpose in view.

[Sir Andrew Clow.]

Then, let me come to what I believe to be the real reason behind the Bill. My Honourable friend refers at the conclusion of his Statement of Objects and Reasons to an anomaly. I will admit there is an anomaly, in this sense that in municipalities subordinates do not have to pay the tax because the Railway Board pays it for them, and when they come to places where this tax applies, they find they have to pay the tax and some of them show resentment at having to do so. I admit that there is a certain element of anomaly in that, but if the House would expect me to remove an anomaly of that kind, it should I think be removed by withdrawing the so-called exemption that has been given, and not by moving in the other direction. I do not think that that exemption is one which we would have given today, and without desiring to criticize the action of the Railway Board in those days, I would say that those were days when people were perhaps in a more expansive mood than they are in today. The only reason we have left it and not repealed it is because the taking away of a privilege is always felt, and there would be some hardship in taking away a thing which has been enjoyed for a considerable number of years. I hope I have said enough to convince the mover of this Bill that even if it were sound in principle, it would not achieve the object which he has in view and that, in principle, it is thoroughly unsound, and I suggest that he should withdraw the Bill.

Mr. M. S. Aney (Berar: Non-Muhammadian): Sir, I am afraid I entirely agree with the Honourable the Member for Communications in what he has just said.

An Honourable Member: Why are you afraid to agree?

Mr. M. S. Aney: I am afraid of being compelled to oppose the learned Mover hereafter; otherwise there is nothing else to be afraid of. Sir, it is perfectly clear that if this Bill is allowed to pass into law, it will affect certain legislation passed by the Provincial Governments which was entirely within the competence of the Provincial Legislatures. If my Honourable and learned friend, Mr. Azhar Ali, had taken care to look into the relevant sections of the Government of India Act, sections 99 and 100, he would have found that under the Act of 1935 a clear distinction has been made between subjects in List I, List II and List III and this subject was covered by List II,—and, therefore, it was only the Provincial Governments that alone could make any law to exempt those who had been taxed by them and nobody else could do that. That is the trouble of it. Therefore, even if we were very favourably inclined towards the subordinate staff for whom my friend feels so much and most of us also, feel like that, I think this is a matter regarding which we are practically helpless as legislators. Secondly, I also agree with another principle which the Honourable Member for Communications has laid down. Because a man is a Government servant I do not recognize him as entitled on that ground to any special privileges at all. Whether a man is a Government servant or a railway servant or a private servant, he draws a certain salary and he must, in my opinion, be subject to the same liability which a man of his income has under ordinary law to submit to. Because he happens to be a public servant, that ought not to give him a higher status or a privileged position. This policy of creating the Government servants as a privileged class for the purpose of exemption from certain taxation or the

conferring of certain kinds or concession for the education of their children is one I do not approve of. That is a wrong policy in my opinion and not at all sound policy. It is true that the Railway Board in the year 1920 or some year before that itself promulgated a circular with a view to the exemption of its servants from this tax. There has been a tendency in certain Departments to secure certain kind of concessions for their own servants. If they can do it out of the resources available to them, they may do so, but when it comes to affect the rights of the Legislature and the revenues collected by the taxation on the general public, I do not think it is a good policy to make any invidious distinction or to lay down any exemptions in favour of Government servants because they happen to be Government servants. The Government servants irrespective of their pay and emoluments must submit to duties and responsibilities and stand on the same footing as the other citizens of the country. From that point of view also I do not think that the Bill is rightly and properly conceived. I, therefore, have to oppose the motion of my friend.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: 12 Noon. Muhammadan Rural): Sir, there is one point which is not quite clear to me and I hope the Railway Member or any other Government Member will throw light on it. I understand that if a Railway servant has taken a house in a municipality, then he is treated just like other citizens of the town and he is subject to all the regulations that the municipality may frame for its residents. But if a Railway servant is residing in a railway building which is outside the municipal limits and in the case of the smaller towns outside the District Boards, will he then be liable to pay tax. These railway buildings are outside the municipal limits because the roads in these areas are repaired by the railways and not by the municipalities. The light on the roads is also provided by the railway and not by the municipalities. The railways collect their own taxes from the *tongas* and *ekkas* which ply in these areas. If these buildings are taken to be outside the jurisdiction of the municipalities and the district boards for providing facilities and other things, then it is worth consideration whether they should not be exempted from those taxes from which they enjoy no benefits.

Mr. Muhammad Nauman (Patna and Chota Nazpur cum Orissa: Muhammadan): Sir, I have heard with great interest the speech of the Honourable Sir Andrew Clow in which he tried to explain to us that the Bill was not in order as this House was not competent to legislate for exemption of the employees of the Central Government from Local taxes as the railway employees happen to be. The position as I understand is that the railways pay to the local bodies taxes on their buildings. Can they not make arrangements by means of which even those houses which are occupied by their employees be treated as the houses in possession of the railways and the taxes to be paid by them in addition to what they have been paying for all the other properties that they may be holding. The only purpose of the Bill, as my Learned friend, Mr. Muhammad Azhar Ali, has explained, is that it seeks to give relief to the railway employees, particularly those who are drawing low salaries, by legislating for their exemptions. I am not very clear what attitude the Federal Court would take if this House passed a Bill to that effect. If the Honourable Sir Andrew Clow is convinced of the legal position and he thinks that we cannot legislate for any exemption from local taxation then the only other alternative

[Mr. Muhammad Nauman.]

would be to seek some relief for these railway employees through that method which Sir Andrew Clow has himself said to be 'Anomalous',—he has pointed it out in a different way. He said that instead of giving a further relief to employees of lower rank, we should withdraw those privileges which are enjoyed by one class of employees and thus bring them on the same level in order to avoid anomalies. I am proposing something very different and I would like the Honourable Member to explain to us the Governments' attitude. After hearing the Government explanation, we may think over whether this Bill should go through or some other steps should be taken. With these few remarks, I resume my seat.

Mr. B. M. Staig (Financial Commissioner, Railways): Sir, with regard to two points that have been raised since the Honourable the Railway Member spoke, I would say in reply to my Honourable friend, Dr. Sir Ziauddin Ahmad, that the taxes at present borne by the Railways are borne wholly in respect of railway buildings. They are not borne in respect of any other buildings occupied by railway servants. Mr. Muhammad Nauman has asked that Government should add to its liabilities in order otherwise than at the expense of a District Board to relieve railway servants of the taxation to which they are now liable under the District Boards Act. The Honourable Member for Railways has already explained that the present Government and we of the Railway Board, are very doubtful indeed whether the liability which was undertaken in 1922 to pay on behalf of railway servants the taxes to municipalities which we now pay should ever have been undertaken. I doubt, therefore, if the Honourable Member can reasonably expect us to acquiesce in the further liability he has now suggested. Government are not prepared to undertake any further measures for the relief of railway employees in respect of municipal or district board taxes.

Mr. Muhammad Azhar Ali: Sir, by bringing this Bill before the House my only object was that if the Railway Department could see the anomaly which has been referred to by the Railway Member himself it would have been very kind and gracious of them. But, on the other hand, I find that the Railway Member is not prepared to give relief of any kind and my friend, Mr. Staig, has said that they are not prepared to add any more to their liabilities, although they have incurred some liabilities in respect of municipalities. Then, it has been said by my friend, Mr. Aney, that the Government of India has no power to amend the Act to give relief to these railway servants. If that is the case, then the Railway Department themselves by some amendment of the Act can give some relief to these poor people. It has been said that the District Boards are not to be deprived of the amount which they levy on these poor people. In that case, the Government ought to take the responsibility of relieving these people. My object was not that the District Boards should be deprived of their amount. As I find, Sir, that the Railway Member is not inclined to accept my motion, I have no other alternative today but to withdraw it.

The motion was, by leave of the Assembly, withdrawn.

Mr. President (The Honourable Sir Abdur Rahim): As the motion has been withdrawn, the amendment also falls through.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I move:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (amendment of section 4) be taken into consideration."

Sir, there is an amendment for circulation and if that is also moved, then it will save the time of the House and I may not take long to put forward my case.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better do his part.

Mr. Lalchand Navalrai: All right. Sir, this Bill attempts to amend section 4 of the Criminal Procedure Code. I must at the very outset say that this Bill pertains to the field of lawyers, but when I explain what I want, it will be clear to every one though he be not a lawyer that this amendment is also in the interests of the public—the litigants and parties who seek redress in criminal courts. Now, Sir, I do not think it requires many words to speak in support of this Bill because when I explain the point, it will be appreciated and in view of the times that have changed. I am sure my amendment will be considered reasonable.

Now, section 4 (1) (r) of the Code of Criminal Procedure is what I am referring to. Before I read out that section, I must say that this section refers to representation by certain classes of people as lawyers and others on behalf of clients. What I want is that the particular class of people who are now allowed under this sub-section to practise in courts should not continue. That section 4 (1) (r) says:

" 'Pleader' used with reference to any proceeding in any court, means a pleader (or a mukhtar) authorized under any law for the time being in force to practise in such court, and includes (1) an advocate, a vakil and an Attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding."

My amendment is that the words in the last line, "any other person appointed with the permission of the Court to act in such proceeding" should be deleted. In other words, I say that any person who is not authorised by law and on whom there is no responsibility or is not subject to any rules to guide and make him responsible, that gentleman should not be allowed to practise in courts with merely the permission of the Court. That would be allowing a person to be at the sweet will and pleasure of the Court and may easily get permission from the court and appear at any time coming in the way of all other legal practitioners from appearing on behalf of that person. Therefore, I am submitting that this portion of the clause is not necessary at present times and it should be deleted. In other words, representation should be restricted to pleaders and advocates and attorneys and Barristers and even those persons who are called mukhtars who pass certain required examinations and are subject to certain rules and regulations. That is the view of my amendment. I have received representations from some parts of India with regard to these 'other persons' and they are mostly from Madras. They say that this provision has outlived its time and should be deleted.

Mr. N. M. Joshi (Nominated: Non-Official): Who says so? Are they all pleaders from Madras?

Mr. Lalchand Navalrai: No, other people also.

Mr. N. M. Joshi: Did you enquire whether all of them are pleaders or not?

Mr. Lalchand Navalrai: From the references in those communications, I understand they are not all of them vakils or barristers, but there are also others who want this provision to be deleted. It is this other class of people who are really causing mischief. No doubt there was a time when legal assistance was not readily forthcoming. But those were antiquated times when some people, in order to give some help to litigants were allowed to practise in courts and this provision was made that any person can be appointed with the permission of the court to act in such proceedings. I can say that it is a dead letter in many of the places in India, but still there are some provinces where this class of people does exist even now. In some places there are the pets of these Magistrates who are given special permission to appear at the sweet will and pleasure of the magistrates. My contention is why such a provision should exist? It is not reasonable and desirable to keep this provision intact now-a-days. I, therefore, submit my amendment should be accepted. Is there any need at this time for this class of people? If there is any need, then it is different. At present we have a large number of Members of the bar available, if anything the bar is already overcrowded and some of them are actually hard up for work. Why should a magistrate be given authority just to choose certain persons and make them his favourites and allow them to appear in cases. The point is very plain. There is absolutely no need for this class of persons at this time when the legal profession is highly developed and there are any number of pleaders, barristers and advocates carrying on their legal practice. Then, who are these people? They may or may not have any academic qualifications but have not passed any legal test he may or may not know the English language, but still the magistrate may permit him to carry on, and that is injurious to the interests of the clients and the litigants. If there is any complaint against him it has to be made to the same magistrate who may perhaps not countenance it and regard it justified. So I submit that it is not just or reasonable to allow them to carry on any longer. They actually get patronage from these magistrates and on the strength of that they mislead people and demand larger fees. Of course all of them may not be unscrupulous but there are surely cases of that type. Some of them may become a sort of middlemen between some magistrates and the litigants.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): Do you get them in any other part of India except Madras? At least they are not found in Bengal.

Mr. Lalchand Navalrai: That is why they should not be allowed to exist any longer anywhere. The system is found mischievous and should be done away with and only those who have passed examinations under the recognized laws should be allowed to practise. I myself have got a letter from a retired inspector of police who is allowed to practise. Is it not a very harmful thing? What does he know of law? He may have investigated a few criminal cases but in that line his mentality may have got vitiated. It may be said that barristers and advocates are costly people. But that is not the case now. On the other hand these outside unauthorized

people make contracts for success with their clients and extract more fees. There was also a provision in this clause about unauthorized mukhtars but that has now been deleted. I submit that these men who have not got the proper education and responsibility should not be given any chance of any more following unscrupulous methods. The dignity of the bar gets compromised if one side is represented by an advocate and on the other side only an uneducated man; and if he somehow by the court's patronage wins the case he boasts to have scored a point over the barrister or an advocate.

It may be said that as these people have been doing work with permission for a very long time they may be allowed to continue. But that is no reason at all. There is no need for them now. It should be remembered that in this House legislation has been made recently taking away the privileges from unauthorised persons who called themselves 'Income-tax experts', and only allowing work to be done by pleaders and advocates. I am referring to the amendment made in the Income-tax Act which did away with so-called 'experts'. Why should the system continue with respect to the Criminal Courts? These people working with permission call themselves 'private vakils', although we know that vakils are men who have passed legal examinations. The inspector of police to whom I referred styles himself as a 'private vakil'. I do not think any credit should be given to these people and allowed to be called private vakils. As regards the income-tax side, an amendment has been made and no new so-called expert will be allowed there

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Are these private vakils LL.B.'s?

Mr. Lalchand Navalrai: You are just like the gentleman who having heard the whole story of Ram and Ravan, asked at the end who was Ram and who was Ravan. I have explained that they are uneducated people. they have not passed any examination and they are not responsible under any law. No Legal Practitioners Act applies to them. . . .

Dr. Sir Ziauddin Ahmad: What is the harm?

Mr. President (The Honourable Sir Abdur Rahim): Let the Honourable Member not be interrupted.

Mr. Lalchand Navalrai: I began by saying, they are only mischief makers. . . .

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

Mr. Lalchand Navalrai: As income-tax experts have gone into oblivion—they are no more needed, so should these people disappear from courts. In their case there will be no difficulty in removing them altogether by deleting the provision of the law. In the representation I got it is pleaded that the magistrate can correct them if they misbehave; but they are their creatures. When they find there are pleaders and barristers available, and yet they appoint these people; how can they be expected to take notice of their conduct?

[Mr. Lalchand Navalrai.]

I have made it clear that this provision is very harmful and should be deleted. If my amendment is allowed, there will be purity of justice, purity of representation and even purity in the persons whom they represent.

I find there is an amendment for circulation. If after all the points I have put forward the Honourable the Home Member still wants to call for opinions—I do not think there will be many who wish this class of people to exist—I shall not stand in his way but shall accept his amendment.

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

“That the Bill further to amend the Code of Criminal Procedure, 1898 (Amendment of Section 4), be taken into consideration.”

There is an amendment in the name of Sir Reginald Maxwell.

The Honourable Sir Reginald Maxwell (Home Member): Sir, I move:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st July, 1941.”

As the Honourable the Mover has stated that he will accept the motion for circulation, if moved by Government, I need say little to explain this motion. The point is that although this subject of legislation falls within the concurrent field and, therefore, the Central Legislative Assembly has power to legislate about it, the executive authority in this matter rests with the provinces: administration of justice is a provincial subject and it would, therefore, not be proper to proceed with legislation of this kind without giving the provinces an opportunity to comment. That has always been the attitude taken up by the Government of India in regard to proposals for legislation in the concurrent field, and the House has hitherto supported us in this line. I, therefore, move.

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

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st July, 1941.”

The question is that the amendment be made.

The motion was adopted.

THE LAND ACQUISITION (AMENDMENT) BILL.

Mr. President (The Honourable Sir Abdur Rahim): With regard to the next motion which stands in the name of Mr. Lalchand Navalrai, I understand that he has not supplied the names of the Members of the Select Committee which he proposed.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I do not want to move it today.

Mr. President (The Honourable Sir Abdur Rahim): The next one is No. 7, also in the name of Mr. Lalchand Navalrai.

Mr. Lalchand Navalrai: I do not think I will move that. I shall move the last item in my name. I move:

“That the Bill further to amend the Land Acquisition Act, 1894, be taken into consideration.”

I shall explain to the House what I want by this amendment. Every one knows that the Government acquire property compulsorily under a certain enactment—that enactment is the Land Acquisition Act of 1894. Under this Act the procedure is laid down how land is to be acquired compulsorily. If the Government want certain portions of land, they have authority under this Act to make out their own scheme by asking for land which belongs to other people to be compulsorily acquired. For that purpose the procedure laid down is that a notice is issued by the Government fixing the time within which the land that is required by the Government will be acquired. Then the next procedure is that the matter comes before the Collector, and if there are no objections the Collector will pass his award. Then the next step which is taken to acquire that land is laid down in section 11. Under this section a day will be fixed and an inquiry will be made by the Collector, and if there are any objections, those will be heard, and then the award is made by him. If the person against whom the award is made is not satisfied with that award, then he shall on demand refer the matter to the court. That comes under section 18. This is what this section says:

"Any person interested who has not accepted the award may, by a written application to the Collector, require that the matter be referred to the Collector for determination by the Court".—*the word 'court' is the point which is at issue in my amendment,—*"whether his objections be to the measurement of the land, the amount of the compensation, the persons to whom it is payable of the apportionment of the compensation among the persons interested."

Now, Sir, what happens is this. The matter comes before the Court. Now, what is meant by Court, how it is defined under this Act, and who can be dealt with it, are the points mentioned in my amendment. The word 'court' has been defined by section 3D, which reads thus:

"The expression 'court' means a principal civil court of original jurisdiction; unless the Local Government has appointed as it is hereby empowered to do a special judicial officer."

It cannot appoint another court within any specified local limits to perform the functions of the court under this Act. I have said that the following words shall be inserted after the word "jurisdiction",—namely, "or the court of a first class subjudge in the Bombay Presidency or the court of a Subjudge exercising similar jurisdiction in other presidencies". Then there is a verbal change that for the word 'unless' the word 'or' shall be substituted. What I want is that instead of one principal court of civil jurisdiction, one other court should also be created in order that these cases may be speedily disposed of and that there should be no congestion of work connected with such cases. Therefore, it is that I have asked that the court of the first Class Subjudge should also be created for the purpose of trying these cases.

I have explained my reasons in the Statement of Objects and Reasons. I may point out that the provision restricting the powers to the principal court of civil jurisdiction existed at a time when there was not much work for District Judges. At that time the position was that there was only one court of the principal civil jurisdiction in a district, and the work was also not much and then first Class Judges were not in existence. These Judges came to function subsequently. Therefore, when this Act was enacted, only the principal civil court of original jurisdiction had to deal with such cases. Later on First Class Sub-judges have also been given as the District Court all the work of original jurisdiction. Therefore, there can be no objection to giving powers to First Class Subjudges to try cases

[Mr. Lalchand Navalrai.]

under the Land Acquisition Act. There was also a time when cases against the Secretary of State or cases in which he was interested were tried only by District Courts, but now the Acts have been amended, and power is given to Subjudges also. So when that power is given to Subjudges, why should they not be allowed to hear these Land acquisition cases as well. There are instances in which District Judges are transferred and sometimes on that ground delay in disposal of cases occurs and the cases remain undisposed of. Another point is, land acquisition cases are increasing in number. There are tracts where new canals have been dug, land is acquired for Government purposes, and all these cases should not be sent to one man or to one court only. Therefore, in order that these cases may be speedily disposed of, I submit the amendment that I have made should be accepted.

Now, in land acquisition cases the Government is only a *pro forma* party. It is more or less a question in which they are not interested as owners. They are made a party, because the reference has to go through the Collector. Therefore, I submit that so far as the facts are concerned there is a good case for making the amendment and accepting my Bill. I am conscious of one point, namely, that it might be urged whether this House has the power, whether it is the Government of India or it is the Provincial Government that can deal with this question. On that question my own opinion is that it is the Government of India that has jurisdiction with regard to the amendment that I am seeking to introduce, that is, creating a new court. For that we have to refer to the Government of India Act. In the Provincial List, no doubt we do find that there is a clause 9—"Compulsory acquisition of land". Before I go on to deal with that point, let me say that this Act, that is, the Land Acquisition Act, is an Act, of the Government of India. The Government of India passed it and they restricted it to a court which is the principal court of civil jurisdiction. 'Compulsory acquisition of land' would mean, actual acquiring of land compulsorily, but not with respect to a matter as contained in this Bill. The words are only "compulsory acquisition of land", not all with respect to the procedure and everything else that has to be done in respect of the land acquisition. It may be that certain powers in taking up of land may belong to the provincial Government and provincial Government may exercise them, but the powers to create courts which have to decide such cases have to be determined by the Government of India under the Land Acquisition Act, where they have provided that there will be only one court. Reference might be made to clause 2 of the List, where it is said: "Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts". Creation of court does not give any jurisdiction. Jurisdiction would mean pecuniary jurisdiction or territorial jurisdiction and those questions may be decided by the provincial Government. Then as regards the word 'powers' which refers to giving powers to existing courts, such as a power of transfer, or delegation, but not that a new court can be created under the expression 'powers'. Therefore, I submit that that does not come under the provincial head and there is no bar to this House passing this Bill. If there be any doubt, there have been instances where the Government of India have asked the provincial Governments under section 108 of the Government of India Act to allow that being done by the Government of India because that will apply not only

to one province, but all provinces. My amendment will have effect in all the provinces. Therefore, I submit that so far as this Bill is concerned, it is a Bill which can be taken up by this House and passed by it. I do not think I need take any more time of the House and I hope that this Bill will be taken into consideration.

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

“That the Bill further to amend the Land Acquisition Act, 1894, be taken into consideration.”

The Honourable Sir Muhammad Zafrullah Khan (Law Member): Sir, I oppose this motion. I am prepared to grant that the motive of the Honourable Member in moving this motion and in seeking that this Bill may be passed into law is unexceptionable. I am also prepared to assume that this amending measure, if it became law, would achieve the object that he has in view. But I am very much afraid that, even if this House were to pass this Bill and it were to be adopted by the other House, it would not become law. It would be just a dead letter as if it did not exist, and the House would be stultifying itself if it proceeded to consider this Bill and to pass it.

It is as clear as anything can be that this House has not the power to deal with this matter. Briefly, what the Honourable Member has in view is that, in addition to the principal civil court of original jurisdiction, certain other courts should also be invested with the power to hear land acquisition matters. Assuming that to be the object of the Bill, it clearly falls within the Second List in the Seventh Schedule to the Government of India Act, that is to say, it falls within the exclusively Provincial List. As the Honourable Member has himself pointed out, entry 9 in that List relates to the “compulsory acquisition of land”, and the jurisdiction and power of all courts relating to matters set out in that List is dealt with in entry 2 of that List. “Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list”, that is to say, so far as this matter is concerned with respect to the compulsory acquisition of land, is a provincial subject. It is within the exclusively Provincial List and this House has no power to consider any such measure. The Honourable Member has argued that this is not a question of jurisdiction or power of courts. Then what else is it? The Honourable Member has, in the course of his speech, once or twice, used the expression that he wants courts created for this purpose. On the other hand, the whole of his argument has been, here are these courts of subordinate judges first class, dealing with other civil matters, having unlimited pecuniary jurisdiction, why cannot they deal with this matter? What he is seeking to do quite clearly is to invest certain classes of courts with jurisdiction under the Land Acquisition Act also. And that is a matter which is within the Provincial List and cannot be dealt with at the Centre. Assuming for the moment that he was not trying to invest certain courts with additional jurisdiction and power but that he was asking for the creation of new courts, even there he is in no better position, because entry 1 in the List says, “.....constitution and organisation of all courts, except the Federal Court, and fees taken therein”. Well, then, either he is trying to invest existing courts with jurisdiction relating to the acquisition of land, in which case he is barred by entry 9, read with entry 2, or he is trying to create, as he says, a new set of courts, in which case he is barred by entry 1 of the Second List.

[Sir Muhammad Zafrullah Khan.]

He has also made a reference to section 108 of the Government of India Act, but I fail to see how that helps him. Section 108 says:

"If it appears to the Legislatures of two or more provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those provinces by Act of the Federal Legislature and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any province to which it applies, be amended or repealed by an Act of the Legislature of that Province."

Section 108 assumes, No. 1, that the matter to be dealt with is in the Provincial List, No. 2, that two or more provinces are desirous of having uniform legislation with regard to such matter and they want to achieve that object by requesting the Federal Legislature to pass the legislation and it then says that in such cases that object can be achieved if the various chambers of the provincial legislatures concerned will pass Resolutions to that effect. The Federal Legislature can then take up the matter and pass the legislation. Section 108 has nothing to do with this matter. If the Honourable Member is of the view that there ought to be uniformity in this respect throughout India or at least in two or more provinces, well, then, he ought to approach the legislatures of those provinces, so that they could pass Resolutions and send up that request to the Central Legislature. This matter clearly falls within the exclusive Provincial List and cannot be dealt with here and I, therefore, submit, that, as I have said, this House would be engaged upon a purely useless operation if it proceeds with the consideration of this Bill.

Mr. M. S. Aney (Berar: Non-Muhammadan): I almost accept all the arguments which the Leader of the House has addressed on the point of the legality of this House to consider the present measure. There is one point which I want to urge for his consideration and also for your consideration, Sir. This was a measure that was introduced in this House. I want to know what is the proper time for the Government or for anybody to raise the question of the jurisdiction of this House to consider a particular measure.

The Honourable Sir Muhammad Zafrullah Khan: I am not taking objection. I am urging these grounds which I have explained before the House to induce the House to throw out this Bill.

Mr. M. S. Aney: Well, the two things put in different ways mean the same thing, and it makes no difference whether it is raised as a

Mr. President (The Honourable Sir Abdur Rahim): If it is a point of order, then it would be for the Chair to decide.

Mr. M. S. Aney: I am putting it as a point of order for you to consider. I see the validity of the legal objection raised by the Leader of the House and if my learned friend had consulted me, I would probably have given him the same advice before he moved this measure but I want to know from you, Sir, when a measure is introduced in this House and a motion for its consideration is before the House, is it the proper time to ask this House to take the legal aspect of the motion, into consideration, namely, whether the House would not be stultifying itself in considering a measure which is beyond its jurisdiction. This cannot be decided by this House

unless you, Sir, come to the conclusion and definitely say that so far as the legal aspect of the thing is concerned, it is beyond the jurisdiction of this House. You have to decide the point. Even if he puts that as an argument for the House to reject it, your responsibility to come to a decision on the legal points raised by him is not obviated. I, therefore, ask whether this is the proper time for him to raise this difficulty. That is the question for you to consider. That is what I want to urge.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member did not put this forward as a point of order for the Chair to decide?

Mr. M. S. Aney: In whatever form he puts it, it is a point of order for the Chair to decide, and I want to know whether this is the proper time to raise this point of order.

Mr. President (The Honourable Sir Abdur Rahim): The question raised by Mr. Aney is whether this is the proper time for urging the argument that has been advanced by the Leader of the House that the Bill would not achieve the object desired by the Mover even if it is passed, because the measure is not within the competence of this House and, therefore, it would be held by proper courts to be *ultra vires* of this Legislature. I think that is the gist of the argument advanced by the Leader of the House. Now, Mr. Aney asks me to say whether it is not too late for the Honourable the Leader of the House to use such argument. I suppose he means that it ought to have been urged at an earlier stage, that is, at the time of the introduction of the Bill. I am not aware of any rule or procedure or any practice which requires that the argument that a legislative measure is beyond the competence of this Legislature ought to be urged at any particular stage. The motion was quite in order as it appears in the List and it is for any Member of the House to advance any relevant argument why this motion for consideration should not be adopted by the House and that is exactly what the Leader of the House has done on this occasion. I see no reason whatever why there should be any difficulty in the way of any member trying to induce the House by such argument to reject a motion by which the House is asked to take the Bill into consideration.

Mr. Lalchand Navalrai: I will raise another point of order. I will submit that the question whether this House has got jurisdiction has got to be decided by the Chair.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is moving the motion. Surely he must have satisfied himself that there is no objection to it.

Mr. Lalchand Navalrai: I have put forward my own point of view and there is a difference of opinion.

Mr. President (The Honourable Sir Abdur Rahim): No objection has been taken to the motion on a point of order. Only certain arguments have been advanced.

The question is:

"That the Bill further to amend the Land Acquisition Act, 1894, be taken into consideration."

The motion was negatived.

THE MUSLIM KAZIS BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages and for the appointment of Tribunals for trying and deciding cases of divorce and dissolution of marriage amongst Muslims.

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

"That leave be granted to introduce a Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages and for the appointment of Tribunals for trying and deciding cases of divorce and dissolution of marriage amongst Muslims."

The motion was adopted.

Qazi Muhammad Ahmad Kazmi: Sir, I introduce the Bill.

THE DELHI MUSLIM WAKFS BILL.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Sir, I beg to move for leave to introduce a Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi.

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

"That leave be granted to introduce a Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi."

The motion was adopted.

Maulvi Muhammad Abdul Ghani: Sir, I introduce the Bill.

THE HINDU MARRIAGE DISABILITIES REMOVAL BILL.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Sir, I beg to move for leave to introduce a Bill to remove legal disabilities under Hindu Law in respect of marriage between Hindus.

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

"That leave be granted to introduce a Bill to remove legal disabilities under Hindu Law in respect of marriage between Hindus."

The motion was adopted.

Mr. Govind V. Deshmukh: Sir, I introduce the Bill.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the Code of Civil Procedure, 1908, for certain purposes.

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

"That leave be granted to introduce a Bill further to amend the Code of Civil Procedure, 1908, for certain purposes."

The motion was adopted.

Qazi Muhammad Ahmad Kazmi: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Qasi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose.

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

"That leave be granted to introduce a Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose."

The motion was adopted.

Qasi Muhammad Ahmad Kazmi: Sir, I introduce the Bill.

The Assembly then adjourned till Eleven of the Clock on Friday, the 14th February, 1941.