

THE 18th February 1941

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

President:

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

Deputy President:

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

Panel of Chairmen:

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MR. M. S. ANEY, M.L.A.

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

MR. N. M. JOSHI, M.L.A.

Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistants of the Secretary:

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KHAN BAHADUR S. G. HASNAIN.

Marshal:

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

Committee on Petitions:

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SYED GHULAM BHIK NAIRANG, M.L.A.

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

SIR ABDUL HALIM GHUZNAVI, M.L.A.

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

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LEGISLATIVE ASSEMBLY

Tuesday, 18th 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.

MEMBER SWORN.

Mr. John Hugh Francis Raper, M.L.A. (Government of India: Nominated Official).

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS

SUPERINTENDENTS PROMOTED AS ASSISTANT EXAMINERS AND ASSISTANT INSPECTORS IN THE INCOME-TAX DEPARTMENT OF BOMBAY TOWN.

90. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Finance Member be pleased to state the number of persons who were promoted from the rank of Superintendent to the rank of Assistant Examiner and Assistant Inspectors in the Income-tax Department of Bombay town during the last ten years?

(b) Was any Muhammadan promoted? If not, why not?

The Honourable Sir Jeremy Raisman: (a) and (b). No person has ever been promoted from the rank of Superintendent to the rank of Assistant Examiner and Assistant Inspector in the Income-tax Department, Bombay City.

Mr. Lalchand Navalrai: May I know whether promotion in this department is also done on communal lines, or by merit and selection?

The Honourable Sir Jeremy Raisman: Promotion is by merit; but as I have stated, this type of promotion has not occurred at all. It is not a promotion. If the Honourable Member looked at the scales of pay, he would realise that nobody would have been anxious for it.

Dr. Sir Ziauddin Ahmad: With reference to Mr. Lalchand Navalrai's question, am I to understand that he means that Muslims should never be appointed?

Mr. President (The Honourable Sir Abdur Rahim): Mr. Lalchand Navalrai can answer that.

EXTENSIONS TO SUPERINTENDENTS IN THE HEAD OFFICE OF THE INCOME-TAX COMMISSIONER IN PATNA.

91. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Finance Member be pleased to state whether the attention of Government has

been drawn to continuous extensions given to Superintendents in the head office of the Income-tax Commissioner in Patna?

(b) Are such extensions, without cogent reasons, permissible under the rules?

(c) Were Government satisfied that the extensions were given on account of the absence of suitable candidates?

The Honourable Sir Jeremy Raisman: (a), (b) and (c). No Superintendent of the office of the Commissioner of Income-tax, Bihar and Orissa, has so far been granted any extension of service. The present incumbent of the post is in his 56th year and, under the rules, he can ordinarily be retained in service up to the age of 60 years if he continues efficient in the performance of his duties.

Dr. Sir Ziauddin Ahmad: I thought it was the policy of the Government now not to grant extensions under ordinary circumstances unless there were very special reasons for it.

The Honourable Sir Jeremy Raisman: The position is that the ordinary rules which apply to persons in Government service before the 1st April, 1938, allow ministerial officers to be kept in service up to the age of 60, if they are efficient. As regards persons appointed on and after that date, they are liable to be required to retire at the age of 55.

Dr. Sir Ziauddin Ahmad: I understand that the question about extensions for persons appointed after 1938 will not arise for another 30 years; but I am talking of the thing applicable now, and I understand that the rule was there, but that the policy of the Government is, on account of the large number of unemployed young men, not to allow this thing in practice, so that the younger people may have a chance.

The Honourable Sir Jeremy Raisman: The conditions of service of these officers at the time the new rule was made included a provision that, if they were efficient, they will go on to the age of 60; and that could not be changed without affecting their conditions of service detrimentally.

Dr. Sir Ziauddin Ahmad: They are not debarred from extension, but it does not follow that the extension will be given as a part of service, and I said that the policy which Government declared repeatedly on the floor of the House—not the Finance Member, but some other Member—is that extension is not usually given unless circumstances demand that such extension should be given in rare cases, not as a matter of right.

The Honourable Sir Jeremy Raisman: The position, as I understand it, was that the sole criterion was that of efficiency; whereas in the past that criterion may not have been applied so strictly, it has since this date been more strictly applied; but the fact remains that a Government servant, who was in service on the date in question and who is perfectly efficient, is entitled to be kept on till the age of 60.

Dr. Sir Ziauddin Ahmad: 55 is on paper; but everybody may be granted an extension at the discretion of the authorities!

STATE LOTTERIES AND GOVERNMENT CONTROL OVER THEM.

92. *Mr. Amarendra Nath Chattopadhyaya: (a) Will the Honourable the Home Member be pleased to state the number of state lotteries held throughout the year 1940, the total amount raised by such lotteries, and the purposes on which such funds were utilised?

(b) Have Government any control over such lotteries with a view to preventing fraud by the institutions carrying on these lotteries?

The Honourable Sir Reginald Maxwell: (a) No State Lotteries were held during the year 1940.

(b) Does not arise.

Mr. Lalchand Navalrai: May I know with regard to State Lotteries, why are they in existence at all?

The Honourable Sir Reginald Maxwell: The policy of Government is to discourage State Lotteries of all kinds.

Mr. Lalchand Navalrai: But what about State Lotteries?

The Honourable Sir Reginald Maxwell: A State Lottery is a Government one.

Mr. Lalchand Navalrai: Are they also discouraged or not?

The Honourable Sir Reginald Maxwell: Yes.

Mr. J. D. Boyle: Is it not a fact that the running of a lottery by a private person is not a cognisable offence provided the lottery complies with certain very simple police provisions?

The Honourable Sir Reginald Maxwell: It is for the private person who wishes to run anything in the nature of a lottery to satisfy himself that his action does not conflict with section 294A of the Indian Penal Code.

Mr. J. D. Boyle: My point is this: these provisions are fairly simple to comply with: but, in addition, you have to get a certificate from the Collector of the District in order to run a lottery at all. Thus, even if you comply with the sections of the Indian Penal Code, it still remains for you to get a certificate from the Collector entitling you to run the lottery? Therefore, it means that the only way of stopping a lottery which has not got a certificate is by a civil process; and, by the time that is done, the damage intended to be prevented has already been done.

The Honourable Sir Reginald Maxwell: No. I do not think the Honourable Member has correctly understood the position under section 294A. No lottery can be held unless it is authorised by the Provincial Government. It is not for the Collector to give a certificate or not; and if any offence is committed against the law, then the process that has to be gone through is a criminal process, not a civil one.

Mr. Lalchand Navalrai: May I know if in Bengal there are too many lotteries, and they are swindling the people there?

The Honourable Sir Reginald Maxwell: I am not aware of that.

DEPORTED INDIAN POLITICAL SUSPECTS RESIDING OUTSIDE INDIA.

93. *Mr. Amarendra Nath Chattopadhyaya: (a) Will the Honourable the Home Member be pleased to state in detail the names of deported Indian political suspects residing at present in different parts of the world outside India, and their offence that laid them to be suspected and leave the shores of India?

(b) How long have they been out of India?

(c) Is the Honourable Member prepared to allow them to come back to India, if they express their desire to come back?

The Honourable Sir Reginald Maxwell: (a) and (b). I would invite the Honourable Member's attention to the answer I gave to parts (a) and (b) of Seth Govind Das's starred question No. 367 on the 14th February, 1939. There are no deported Indian political suspects residing outside India. If the Honourable Member refers to persons who have voluntarily left India on account of their political activities Government have no complete list of such persons.

(c) The Government of India will be prepared to consider any requests that may be received from such persons for facilities to return to India.

BANNED COMMUNISTIC LITERATURE.

94. *Mr. Amarendra Nath Chattopadhyaya: Will the Honourable the Home Member be pleased to state if communistic literature falls under the category of undesirable literature? If so, will the Honourable Member be pleased to lay on the table a list of such literature which cannot be imported from foreign countries and literature written and published in India?

The Honourable Sir Reginald Maxwell: I would refer the Honourable Member to the replies I gave to Shrimati K. Radha Bai Subbarayan's starred question No. 288 on the 16th August, 1938, and to part (a) of Mr. Mohan Lal Saksena's starred question No. 374 on the 14th February, 1939.

Pandit Lakshmi Kanta Mahtta: Do I understand that the opinions expressed by the Government in reply to those questions hold good today also?

The Honourable Sir Reginald Maxwell: Yes, Sir.

LEAKAGE OF INFORMATION re THE OPINIONS RECEIVED BY THE GOVERNMENT ON THE QUESTION OF THE EXTENSION OF THE FEDERAL COURT'S APPELLATE JURISDICTION.

95. *Dr. P. N. Banerjee: (a) Has the attention of the Honourable the Home Member been drawn to the reports that have appeared in the Press purporting to give out opinions received by the Government of India on the question of extension of the Federal Court's appellate jurisdiction?

(b) Has any enquiry been made by the Honourable Member as to how this information leaked out to the Press, when the same had been withheld from this Assembly by Government?

(c) Are the Press reports about the alleged opposition in Bombay and Calcutta correct? Will the Honourable Member, in view of this leakage, lay all the opinions received by the Government of India on the table of this House?

(d) Will the Honourable Member lay on the table of this House a list of the bodies, institutions and persons whose opinions have been sought and received by Government on the question of the extension of the Federal Court's appellate jurisdiction?

(e) Do Government propose to introduce legislation on the aforesaid question? If so, when?

The Honourable Sir Reginald Maxwell: (a) and (b). Government have seen certain articles and discussions of the subject in the Press. These presumably express the opinions of those interested in the subject who have deemed fit to communicate them to the Press. In some cases the opinions of Bar Associations consulted by Government appear to have been communicated to the Press. Such communication was not made by Government.

(c) For the reasons stated in my reply to Pandit Lakshmi Kanta Maitra's supplementary question on the 11th November, 1940, I am not prepared to lay on the table of the House a copy of the opinions received or to say whether the reports of alleged opposition in Bombay and Calcutta are correct or not.

(d) Provincial Governments, High Courts and Bar Associations only were consulted.

(e) The question whether legislation should be undertaken is under consideration, and no decision has yet been reached.

Dr. P. N. Banerjee: Have the Government of India sent a recommendation to the Secretary of State?

The Honourable Sir Reginald Maxwell: I have informed the Honourable Member that the matter is under consideration at present.

Pandit Lakshmi Kanta Maitra: Is the Honourable Member aware that the fact that the Calcutta High Court and the Bombay High Court are opposed to the extension of the appellate jurisdiction to the Federal Court has been given out to the press?

The Honourable Sir Reginald Maxwell: I am not responsible for what has appeared in the press.

Pandit Lakshmi Kanta Maitra: My point is that it has appeared in the press that the Calcutta High Court and the Bombay High Court are opposed to the extension of the appellate powers to the Federal Court. If that is so, will the Honourable Member kindly explain to us why this information is withheld from this House, when it has somehow leaked into the press as the Bombay and Calcutta High Courts would not be interested in giving out their views to the press?

The Honourable Sir Reginald Maxwell: Various things reach the press without the authority of those who are responsible for them.

Pandit Lakshmi Kanta Maitra: Do I understand that after these reports appeared in the press, the Honourable Member did not take care either to confirm them or to contradict them?

The Honourable Sir Reginald Maxwell: No, Sir, I have no reason to contradict them. As I have already stated, I am not responsible for anything that is published in the press on this subject.

Dr. Sir Ziauddin Ahmad: Is the press report correct?

The Honourable Sir Reginald Maxwell: I have already said that I am not able to give any information to the House on matters which are under consideration.

Dr. Sir Ziauddin Ahmad: With reference to part (b) of the question, may I know whether the Honourable Member will bring any legislation on this subject this Session?

The Honourable Sir Reginald Maxwell: I have already replied to that question in answer to part (e) of the question.

Qazi Muhammad Ahmad Kazmi: What are the reasons why Government are keeping this information confidential? It is a matter in which the public is interested, and both the public and other parties have to be consulted. This matter must be published, and there is no reason why Government should keep the whole thing confidential.

The Honourable Sir Reginald Maxwell: The Honourable Member will find the reply to that in answer to the previous question quoted in answer to part (e).

Pandit Lakshmi Kanta Maitra: Is the Honourable Member aware. . .

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

PROPOSAL FOR HOLDING SITTINGS OF THE JUDICIAL COMMITTEE IN INDIA TO DECIDE INDIAN APPEALS FOR THE DURATION OF THE WAR.

96. ***Dr. P. N. Banerjee:** Will the Honourable the Home Member please state whether Government have under consideration the alternative proposal of arranging for the sittings of the Judicial Committee in India to decide Indian appeals for the duration of the war?

The Honourable Sir Reginald Maxwell: No such proposal is under consideration.

REPRESENTATION FROM ENGLAND ON THE QUESTION OF EXTENSION OF THE FEDERAL COURT'S APPELLATE JURISDICTION.

97. ***Dr. P. N. Banerjee:** Will the Honourable the Home Member please state whether Government have received any representation from any association or institution in England on the question of the extension

of the Federal Court's appellate jurisdiction? If so, will the Honourable Member lay a copy of the said representation on the table of this House?

The Honourable Sir Reginald Maxwell: The reply to the first part is in the negative. The second part does not arise.

MESSAGE FROM H. E. THE GOVERNOR GENERAL.

Mr. President (The Honourable Sir Abdur Rahim): I have to read a Message received from His Excellency the Governor General. The Message is as follows:

"In exercise of the powers conferred by rule 2 of the Indian Legislative Rules, I, Victor Alexander John, Marquess of Linlithgow, hereby appoint the Honourable Sir Andrew Clow to perform the functions assigned to the Finance Member under rule 46 of the said rules on the occasion of the General Discussion appointed for Saturday, the 22nd February, 1941, of the statement of the estimated annual expenditure and revenue of the Governor General in Council in respect of Railways."

(Sd.) LINLITHGOW,
Viceroy and Governor General."

NEW DELHI;
The 29th January, 1941.

MOTION FOR ADJOURNMENT.

RIFLE RANGE BUILT OUTSIDE THE PESHAWAR CANTONMENT.

Mr. President (The Honourable Sir Abdur Rahim): I have received notice of a motion to adjourn the business of the House from Mr. Govind V. Deshmukh. He wishes to discuss a definite matter of urgent public importance, namely, the refusal of the Government to remove the rifle range built outside the Peshawar Cantonment near Ledakal village surrounded by many villages which is a source of constant danger to the villagers resulting in loss of life, the recent being of a woman named Bacho who was hit by a bullet on the 15th February, 1941, and died the same day. When was this rifle range built?

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): It was built some years ago.

Mr. President (The Honourable Sir Abdur Rahim): How long ago?

Mr. Govind V. Deshmukh: The matter is of recent occurrence. I do not know when exactly the rifle range was built.

Mr. President (The Honourable Sir Abdur Rahim): It has been in existence for some time?

Mr. Govind V. Deshmukh: Yes, but the danger is a recurring danger.

Mr. President (The Honourable Sir Abdur Rahim): You have mentioned one accident. I do not think it can be said that because an accident has occurred like this, this motion for adjourning the business of the House is justified. The motion is disallowed.

Mr. Govind V. Deshmukh: Sir, before you proceed further, may I bring one fact to your notice, apart from this adjournment motion, whatever its fate may be. I had been to this House to hand over this notice of motion of adjournment to the Defence Secretary. He was not to be found on the premises. I waited for fifteen minutes

Mr. President (The Honourable Sir Abdur Rahim): The motion is not in order.

Mr. Govind V. Deshmukh: My observations are quite apart from this motion, because the difficulty I mention is frequently occurring, and this is the second time that I experience this difficulty, and a remedy should be found out

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can have a talk with the Defence Secretary and make any suggestions he likes to him.

Mr. M. S. Aney (Berar : Non-Muhammadan): May I make a submission, Sir? What my friend is contending is this, that on two occasions he found that the Honourable Member concerned could not be seen in the House, and it is really difficult to hand over the notice in time. Some remedy should be found for it

Mr. President (The Honourable Sir Abdur Rahim): All right; the Secretary will take note of it.

ELECTION OF MEMBERS TO THE COURT OF THE DELHI UNIVERSITY.

Mr. President (The Honourable Sir Abdur Rahim): I have to inform the Assembly that upto 12 Noon on Friday, the 14th February, 1941, the time fixed for receiving nominations for the Court of the University of Delhi, five nominations were received. Subsequently one member withdrew his candidature. As the number of remaining candidates is equal to the number of vacancies, I declare the following to be duly elected:

- (1) Mr. Rafiuddin Ahmad Siddiquee.
- (2) Mr. Lalchand Navalrai.
- (3) Dr. Sir Ziauddin Ahmad, and
- (4) Khan Bahadur Mian Ghulam Kadir Muhammad Shahban.

THE INDIAN RAILWAYS (AMENDMENT) BILL.

The Honourable Sir Andrew Clow (Member for Railways and Communications): Sir, I move :

"That the Bill further to amend the Indian Railways Act, 1900, as reported by the Select Committee, be taken into consideration."

The changes made in the Bill are explained in the Committee's Report. The amendments in clauses 1 and 5 are of a virtually formal character, and the changes of substance are those in clauses 2 and 4 and are designed to

give further protection to the *bond fide* traveller. I do not propose to take up the time of the House discussing the individual clauses as these can be better considered at a later stage. I might say, however, that I have had the advantage of discussion with representatives of Parties in the House which will, I hope, tend to shorten our discussions.

We have not, however, reached complete agreement; I think, in particular, on clause 3 there is still a divergence of opinion, and I am afraid that that divergence is not merely one of detail but one of principle. I would, however, observe that the Bill really introduces no new principle. The principles are in the existing Act, and the main object is to provide more deterrent penalties for infringement of the provisions. I notice that a number of amendments are directed not against this Bill at all, but against provisions which have been reproduced from the existing Act. There is a new departure admittedly in that it is proposed to render the fraudulent traveller who travels with intent to defraud liable to imprisonment substantively, and not merely in default of payment of any fines that may be inflicted upon him, and it is here, I think, that the difference of principle arises. If Honourable Members will refer to the Minute of Dissent which two Members of the House have appended to the Select Committee's Report, they will find this fact :

"We have no objection in sending persons to jail for non-payment of railway fares, penalties and fines, but we do object to the principle in sending a person to jail in preference to realisation of fine. Some of our colleagues consider that the use of railway carriage without payment of necessary fare is equivalent to the pilfering from shop and comes under the heading of larceny. We do not agree with this view, and we believe that the use of railway carriage without payment is a civil liability in the same manner as the non-payment of the rent of a house. The use of a carriage without payment is not depriving any individual of any property."

I am afraid that it is exactly here that I differ radically. I cannot regard a passenger who travels with deliberate intent to defraud as at all on a par with a man who incurred a civil liability by an omission to pay his rent. I speak subject to correction, but I believe that even a man who entered a house with intent to defraud the owner of his rent would incur more than a civil liability. If a man who enters a restaurant, for example, without any intention to pay and knowing he has no means to pay, should devour a hearty meal and then not pay, I think he incurs more than a civil liability. But, actually, there is really no parallel in the two cases, because the person who has entered a house and has omitted to pay rent is there, unless he is a trespasser in which case he is punishable with imprisonment,—he is there with the knowledge of the owner and the owner is perfectly well aware of the amount and that the rent is due to him. The man who enters a railway carriage with intent to defraud does his best to conceal the fact that he owes any money to the railway and it is there precisely that one of the main differences lies.

I am afraid, in respect of the concluding observation which I have quoted, that I differ even more radically from the two Honourable Members who signed the Minute of Dissent. That is the observation, "The use of a carriage without payment is not depriving any individual of any property". I cannot myself regard fraud on the community as any less grave than a fraud on the individual. It is perfectly true that the man who travels without a ticket does not inflict any measurable loss on any single individual. He does not cause any appreciable injury to any particular individual except one, and that is himself on whom he inflicts a terrible injury. But at the same time he is injuring the community and the

[Sir Andrew Clow.]

measure in which we are willing to ensure that the rights of the community shall be firmly enforced is the measure of the civic sense prevailing amongst us. I would appeal to Honourable Members to recollect that they sit here not merely to represent the weaker and the more tempted members in their constituencies and not merely to represent others in their constituencies as individuals. They are here to protect the public welfare on which all progress in society depends.

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

"That the Bill further to amend the Indian Railways Act, 1880, as reported by the Select Committee, be taken into consideration."

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

"That the Bill be re-committed to a Select Committee consisting of Dr. Sir Ziauddin Ahmad, Sir Muhammad Yamin Khan, Mr. J. Ramsay Scott, Mr. Govind V. Deshmukh, Mr. N. M. Joshi, The Honourable Sir Andrew Clow, Mr. B. M. Staig, Khan Bahadur Mian Ghulam Kadir Muhammad Shahban, Khan Sahib Shaikh Abdul Hamid, and the Mover, with instructions to report on or before the 26th March, 1941, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

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

"That the Bill be re-committed to a Select Committee consisting of Dr. Sir Ziauddin Ahmad, Sir Muhammad Yamin Khan, Mr. J. Ramsay Scott, Mr. Govind V. Deshmukh, Mr. N. M. Joshi, The Honourable Sir Andrew Clow, Mr. B. M. Staig, Khan Bahadur Mian Ghulam Kadir Muhammad Shahban, Khan Sahib Shaikh Abdul Hamid, and the Mover, with instructions to report on or before the 26th March, 1941, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Discussion will proceed on both the motion and the amendment which has just been moved.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadan Rural): Mr. President, I have listened with great attention to the appeal which has just been made by my Honourable friend, Sir Andrew Clow, to consider this piece of legislation mainly from the point of view of the welfare of the community as a whole and not from the point of view of individuals. I may tell him at once that that is a proposition with which I am in perfect agreement, but the question here is really one of approach. It is quite a truism to say that in all legislative matters a legislator should be guided by the sole and paramount consideration of the well-being of the community, nevertheless, when one gets down to settle the details of the line of conduct by which that ideal is to be reached differences are bound to crop up owing to the differences in individual ways of thinking and to temperamental differences. On the broad question of checking ticketless travel, I think there is not one single Member in the whole House who is not at one with the Government. We do not require to be told that ticketless travelling, apart from its being a vice, is also a crime in that it defrauds the carriers of their legitimate dues. But with this question of delinquency, are bound up considerations which cannot be lost sight of. One has to bear in mind that

the railways in India are a monopolistic concern, a system of carriers which is a monopoly, and I am one of those who are opposed to any system of monopoly, however well designed, however benevolent it might be.

Mr. N. M. Joshi (Nominated Non-Official): In the hands of a proper State, monopoly is an advantage.

Pandit Lakshmi Kanta Maltra: I am in perfect agreement with my Honourable friend, Mr. Joshi, that from the socialistic point of view, or rather from the point of view of enlightened socialism, if public utility services are in the hands of a State controlled by their own nationals, not by an alien bureaucracy, it is a blessing. In fact, it is a much better system than the one in which the public utility services are controlled by a machinery over which the people have no control.

Sir, the House is aware that the Bill has had to pass through many a vicissitude. Last time when it was committed to the Select Committee, it was shorn of some of its original repugnant provisions but even as it has emerged from the Select Committee today one cannot fail to detect in it its noxious features; they are dressed up in such a manner as to elude one's notice. In the first place, the original Bill, I mean the Bill which was introduced by Sir Muhammad Zafrullah Khan in 1936, which was hotly contested and practically fought out of this House, provided *inter alia* that the onus of proof in a case coming under it before a criminal court would be invariably not on the prosecution, as is the established practice and principle of criminal jurisprudence in this country but on the man who would be prosecuted, that is to say, on the accused. On that one rock the whole Bill foundered. It met its doom. It passed away unwept, unhonoured and unsung. It was sought to be revived by another device in the following year and it was referred to a Select Committee which never sat. Government paid me a great compliment by taking me in that Select Committee even without my knowledge or consent, but, fortunately or unfortunately, the Select Committee of 1937 never met. Government had since been biding their time to find a suitable opportunity to re-introduce the Bill and the opportunity came when my Congress friends walked out of this Assembly, in a dramatic exit in November last. What do we find today? The Select Committee has made an addition of two new clauses or sub-clauses, whatever they may call it. My friend, Sir Andrew Clow, stated just now, that he never tried to introduce any new principle in this Bill. I do not see eye to eye with him in this statement. I do not understand what he really means by introduction of a new principle but what I feel is that the mischief, that was latent in some of the old provisions, has been made more patent by some of the provisions in the new Bill. What is really wanted is to set up a machinery by which this vice of ticketless travelling may be effectively checked. I am not one of those who believe that legislation however carefully worded can achieve the object, unless there is provision along with it for a suitable machinery by which the provisions of the Bill can be given effect to. I find that my friends on the Treasury Benches are obsessed with the belief that if they can only make some stringent provisions, so stringent that people would be simply scared away by them as they appear on the paper, the object in view would be achieved. This is a great mistake. There is, for instance, the capital sentence provided for the crime of murder. Has murder been completely

[Pandit Lakshmi Kanta Maitra.]

wiped out of this country, by the fact that capital sentence has been provided for it? No. So, I say that by simply tightening up your legislative provisions you cannot effectively check this evil. But from this argument you must not infer, and you will be doing us a grave injustice if you do so, that we have sympathy with ticketless travelling. We have none. I for myself believe that you have made too much of this vice of ticketless travelling. You have given exaggerated emphasis to it. What do the figures say? From the figures that are available it would appear that of the total number of 529 millions of people who have travelled all over the different railway systems in India in the year 1939-1940, 1½ millions were ticketless travellers

An Honourable Member:

detected ticketless travellers.

Pandit Lakshmi Kanta Maitra: My friend wants to add the word 'detected' before. I wanted to put it after. I will accede to his request. The 1½ millions may be classed as beggars and mendicants detected. I hope that meets your point. Besides this, I am told that there were another 2.85 millions of undetected ticketless travellers of the non-descript class.

The Honourable Sir Andrew Clow: We do not know how many undetected cases there were. I referred to detected ones in both classes.

Pandit Lakshmi Kanta Maitra: Thank you for the correction. Besides this 1½ millions of detected ticketless travellers, classed as vagrants and mendicants, there were another 2.85 millions of travellers who paid their excess charges and fares.

The Honourable Sir Andrew Clow: Both the 1½ millions and 2.85 millions plus 2.85 millions of ticketless travellers of the detected class. We do not know the number of undetected classes.

Pandit Lakshmi Kanta Maitra: It comes to this. There has been 1½ millions plus 2.85 millions of ticketless travellers of the detected class under the categories of beggars and mendicants and non-descript class, if I may say so, including in this formidable roll Government servants, travelling first class without ticket.—Europeans vying with Indians in the matter of travelling at night without tickets after putting down the safety catches

Mr. M. S. Aney (Berar: Non-Muhammadan): May I know whether this includes those travellers who travel in higher class with lower class ticket?

Mr. J. H. F. Raper (Government of India: Nominated Official): Those who travel without a proper pass or ticket.

Mr. M. S. Aney: What is meant by a proper pass? Does this include those who travel in a higher class with a lower class ticket?

Mr. J. H. F. Raper: That would be so. It includes that.

Pandit Lakshmi Kanta Maitra: I am surprised to note that. How can they be classed as ticketless travellers. It becomes a misnomer. Out of a total of 529 millions who actually travelled on all railway systems, this figure worked out mathematically comes to 5 per cent. of the total travelling population. Where is then your case for a Bill like this? I have said on more than one occasion that I honestly believe that this evil can be effectively checked without the provisions of this Bill; if there is set up a proper machinery for issuing tickets at all railway stations, that is, if the Railways provide better facilities for issuing tickets and for checking of tickets.

Nobody would encourage ticketless travel when he is inconvenienced by these travellers; people who pay their fares and travel in compartments are the last persons to like others, who do not pay for their passage, to travel with them and cause them annoyance, inconvenience and disturbance. In the interest of their own comforts it becomes a sort of necessary duty with the travelling public, who pay their fares, to detect these ticketless travellers. But the difficulty is that even if they are minded to help in their detection, the proper people are not coming forward to deal with these men. That is the experience of most people. I gave several instances in connection with the Ticketless Travel Bill of 1937 and the position is the same today also. I pointed out to my Honourable friend, Sir Raghavendra Rau, who was then in charge of these matters in place of my esteemed friend, Mr. Staig, that military men, represented here by my friend, Mr. Ogilvie, who is not here now, behaved as if it was their birthright to travel in upper-class compartments without holding proper tickets for them.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): The Europeans are the greatest sinners in the matter of travelling higher class with lower class tickets.

Pandit Lakshmi Kanta Maitra: On one occasion I had to take the help of the guard of the railway train to evict these people from my compartment. These people had not been holding any proper pass or ticket. One Tommie had the cheek to tell me that he was a military man coming from the district of Chittagong. Well, I said he might have had his way there under lawless laws but this was a Railway Administration and he could not travel with impunity without paying the Railway fare.

Mr. M. S. Aney: Don't you think that class should be sent to jail?

Pandit Lakshmi Kanta Maitra: I would much rather like that people who abuse their privileges as Government servants should be sent to jail as they are expected to have a better sense of discipline and duty. Sir, I was told on the floor of this House that it is the usual practice with military people to travel a class higher than that for which they hold a ticket. If you want to make a law which would be applicable for all classes of people, civil and military, Government servants and non-Government servants, I am at one with you, but I am absolutely certain that whether it is Mr. Staig or the Honourable Sir Andrew Clow, none will ever enforce the rule that military people should never travel in a class of carriage other than that for which they hold tickets. Why should I then be a consenting party to a piece of legislation under which such discrimination is allowed?

Mr. N. M. Joshi: What about saloons?

Pandit Lakshmi Kanta Maitra: Sir, I am leaving aside the question of saloons in connection with this ticketless travel. What usually happens . .

Mr. M. S. Aney: In saloons men who are not entitled to travel therein also travel.

Pandit Lakshmi Kanta Maitra: That is quite true. Cases have been brought to the notice of this House where people not entitled to travel in saloons have actually travelled therein,—and saloons used to be let out also in the good old days, but they are not to be now I hope in the days of Sir Andrew Clow.

An Honourable Member: For shooting?

Pandit Lakshmi Kanta Maitra: On far more romantic business than shooting, *vis.*, honey-mooning. Sir, it has been our experience that very often people have to travel by railways without tickets, not with the object of cheating Railways but because they have not been able to come in time to the station to buy tickets, but for some urgent or important business they have had to board the train and not to wait for another train which might run hours after that. On many occasions people cannot buy tickets because there is such a formidable rush at the counters and they cannot elbow their way to them; that is a fact. Go to any counter in an important railway station and see for yourselves. I am not talking of the first class or the second class counter but I am talking of the third class counters. You will find what a tough job it is to purchase a ticket there. It becomes a question of the trial of strength and nowhere is the law of the survival of the fittest more in evidence than at the third class counters in an Indian railway station. The weak people cannot take the risk to buy tickets there, but they have to travel all the same. They do want to pay their legitimate fare, but where is at present the effective system of arrangement by which they can do that? There used to be in the old days guards who were authorised to give permission to such passengers to travel without tickets but they would realize the legitimate fares from them either at the train or at the end of their journey. Later on, a notification was issued by the Railway Board withdrawing all such powers from guards or other travelling inspectors on duty.

An Honourable Member: On what Railway?

Pandit Lakshmi Kanta Maitra: On every railway system.

An Honourable Member: No, no.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member ought to address the Chair.

Pandit Lakshmi Kanta Maitra: I am sorry I had to reply to that interruption.

This matter was brought to the notice of the then Honourable Member in charge, Sir Joseph Bhole, and my friend, Sir Raghavendra Rau, was

pleased to issue a circular as a result of which guards are now permitted to issue certificates on payment of certain penalties. That is still the practice. In the case of third class, it is a penalty of two annas, in the case of inter class, it is four annas, in the case of second class, it is eight annas and in the case of first class it is one rupee. For instance, if a person cannot buy a ticket and has to travel a distance of five miles, he may inform the guard who gives him a certificate; then if the normal fare is six pice, he will have to pay two annas more as penalty,—for his inability to purchase a ticket, due to circumstances over which he had no control. This I say is highly unfair.

Mr. Lalchand Navalrai (Sind: Non-Muhammudan Rural): I do not think there is such a system of certificates?

Pandit Lakshmi Kanta Maitra: A limited power is given to the Eastern Bengal Railway and perhaps to one or two other Railways and that power is now in the hands of the guard. However, I expect a reply on these points from my Honourable friends, Mr. Staig or Sir Andrew Clow. Sir, it has been provided in the first clause that permission should be sought for entering a railway carriage or remaining in it from a competent railway authority in the absence of a proper ticket or pass. If you want to enforce that, then it is incumbent on you to provide that whenever such permission is sought, that permission should be forthcoming; in other words, whenever permission is sought, it must be given. Of course, if there are other circumstances such as over-crowding and you cannot allow the passengers to get in, it is another matter. But it will not lie in the mouth of the guard to say: 'I have no power to do anything'. What usually happens is like this. A man at the last moment comes to the station and cannot buy a ticket and he wants a certificate from the guard saying that he is travelling from such and such place and that he has not been able to buy a ticket. But the guard says that he has no authority. Then the poor fellow asks him where to go. The guard says: 'I do not know'. In this way, he keeps moving like a shuttlecock from place to place till he is caught hold of by a ticket checker in the train who says: 'You have been travelling without a ticket.' Now, this must be stopped and if you are to stop it, then, I think, the best thing would be to allow a passenger so circumstanced to inform the guard of the fact of his boarding a particular train and of not being able to purchase a ticket and this intimation ought to be enough to absolve him from all penalties or excess fares other than the charges for which he is liable. But the Select Committee has not made any such provision. I, therefore, ask the House to consider this aspect of the question, whether or not a passenger should be compelled to pay the excess fare besides the legitimate fare if he cannot, in the absence of any such provision by the Railway, intimate the fact of his travelling without a ticket or the fact of his not being able to purchase a ticket. We have suggested by an amendment that whenever such permission is sought, at least the grant of such permission shall be obligatory.

Then, Sir, there are two vital things that have been introduced into this amending Bill but which have been practically left untouched by the Select Committee though two of its Members have appended a Minute of Dissent. They are the substitution of imprisonment as a substantive form of punishment in lieu of fine and the power of railway servants to eject persons found

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travelling without ticket. Sir, as I read the Select Committee's Report, I express my thanks to the two dissentient Members, Dr. Sir Ziauddin Ahmad and Mr. Deshmukh, for the Minute of Dissent they have appended to the Select Committee's Report. I may not agree with some portion of it, but it has touched the main points indicating the dangers and difficulties that lurk within the provisions. I would like to draw the pointed attention of my Honourable colleagues to these provisions. Sir, in the proposed amendment of section 112, the Report of the Select Committee has changed the existing penal provision by providing as a substantive form of punishment imprisonment for a term which may extend to one year. Section 112 of the Indian Railways Act, as it stood before, read thus:

"If a person with intent to defraud a Railway Administration enters, in contravention of section 68, any carriage on a railway or uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used, he shall be punished with fine which may extend to Rs. 100 in addition to the amount of the single fare for any distance which he may have travelled."

Now, the Select Committee has amended this penal provision in this way:

"Shall be punished with imprisonment for a term which may extend to one year or with a fine which may extend to Rs. 100."

I do not understand what led the sponsors of the Bill to make such a big jump to substitute the substantive punishment of imprisonment for fine. Even if they consider that such a provision for imprisonment would act as a sort of deterrent, may I ask why did they prescribe one year's imprisonment for a person travelling without a ticket? It is absolutely monstrous. I want the House to bear in mind that in 1936 when Sir Muhammad Zafrullah Khan brought his Bill, there was provision in it for only two months' imprisonment. The Bill was scotched but could not be killed and it has now been revived with a fresh fang, more potent and poisonous. Now, what has happened in this interval that we should enhance the punishment from two months to one year? The House has to bear in mind another fact. As I pointed out at the very beginning, Indian railways constitute a monopolistic system under the absolute control of the Government but there are other alternative modes of transport. One may or may not agree as to how far a civil liability can be transformed into a criminal liability as has been sought to be done in the present Bill. My friends on the Treasury Bench have differed from us. They simply think that it is not a civil liability at all. But may I ask if there has been a single case when a man who travels over a Steamer Company, for instance, without a ticket and does not pay his fare but has been sent to prison, because of this non-payment of fare, for a term which may extend to one year, unless, of course, there is a definite proof that the man was travelling with the object of sabotage or of some other mischief? If a person runs a motor transport service, is he going to get that kind of protection from law which you want for your own railway system? This is absurd. Why should this railway system ask the Legislature of this land to arm it with protective powers which other alternative systems of transport in this country are not entitled to enjoy? This is a point which the House should bear in mind. Therefore, I would submit that if you at all want that the punishment of imprisonment should be substantive, you should not fix it so high as that. You may fix it at two months at the most as was

originally proposed by Sir Muhammad Zafrullah Khan. We are not prepared to go beyond that. That is our feeling; that is our view. You may carry your proposal by the sheer brute force of your votes. But that is another matter. We cannot associate ourselves with it. We cannot support a provision by which any man travelling without a ticket may be sent to one year's penal servitude. We are opposed to that.

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): If he cannot pay what would you suggest?

Pandit Lakshmi Kanta Maitra: I am opposed to imprisonment. I have told the House so often that I am opposed to the substitution of imprisonment as a substantive form of punishment for people travelling without tickets.

Sir Muhammad Yamin Khan: You want that to be alternative.

Pandit Lakshmi Kanta Maitra: There should only be a sentence of fine as no other systems of transport are allowed any special treatment. We are not going to give any specially privileged position to the railways. The railways cannot claim any.

The other point is that the Select Committee have provided a sort of machinery by which the dues are to be collected. Now, Sir, I have something to say with regard to this. The Select Committee have provided that if a railway servant specially authorised by the Railway administration applies to any Magistrate for its demand against any person the Magistrate shall realise it from him as if it were a fine and may for that purpose even send that person to imprisonment extending to one month. Sir, I was extremely surprised when I read this provision of the Select Committee. Apparently it evaded the vigilance even of my Honourable friend, Dr. Sir Ziauddin Ahmad, and also of the able lawyer Mr. Deshmukh. May I ask, why create this machine of a magistrate who is simply to execute the orders of a railway servant? The rank of the railway servant is not specified, his status is not defined, he gets an authorisation from his employers to approach a Magistrate and tells him "Sir, so much is due from this man". What is the devil of the Magistrate to do? He has not to go into the merits of the case. He has simply to issue a distress warrant to get hold of the property of the man and failing that he will send the man to prison for one month. I am told that this provision makes no departure from what obtains in the existing Act of 1890. Sir, in the Railways Act of 1890, there is a provision similar to this, but the setting in which it appears here gives it a different import. Moreover it took several years before the several High Courts in this country could lay down its actual meaning and significance. In the High Court case reported (1920) in 55 Indian Cases—Station Master Ranaghat *versus* Habul Sheikh—and also in the case reported in 14 Calcutta Weekly Notes, page 195,—it was laid down that an order imposing a penalty without any inquiry is bad in law, that when a person is charged under section 113 of the Railways Act for travelling without a ticket and he denies that he travelled by train, the proper method of dealing with the case is to hold an inquiry and take evidence as his liability to pay and how much payable by him and that an order imposing a penalty without any such inquiry is bad in law. Sir, I would ask the House to bear

[Pandit Lakshmi Kanta Maitra.]

in mind that this Railways Act was passed in 1890 and it was in 1920, that is thirty years afterwards, that such a clear judicial interpretation was put on this section. I, therefore, suggested—I have so suggested in my amendments—that you must set that point beyond the possibility of doubt. In other words, you must recast the present phraseology which runs thus:

“any railway servant appointed by the railway administration in this behalf,”

I draw the attention of the House to the expression “any railway servant”, the rank of the railway servant is not mentioned,—

“may apply to any Magistrate for the recovery of the sum payable as if it were a fine, and the Magistrate shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month.”

I am afraid this is an absurd position. I know that it is not the intention of my Honourable friend, the Railway Member, or his Department, to reduce the Magistrate to such a position, but when with the set object of checking ticketless travel, you make a legislative enactment, you must make your provisions precise and clear. You cannot leave it to the speculation of lawyers, you cannot leave it to the ingenuity of clever disputants to find out its proper meaning. Therefore, I do suggest that when a railway servant of a certain rank is authorised by the railway administration to make representation to a Magistrate of a certain rank, the Magistrate should record evidence and, if he is satisfied, shall proceed to realise the charge. The point that I wish to be made quite clear is that the Magistrate is not simply to carry out the behests of the railway servant. He has to apply his own judicial mind to the case referred to him. The Magistrate should be judicially satisfied on evidence to be recorded in writing. Sometimes the Magistrate may be satisfied by a variety of other things and not by actual evidence. For instance, a railway servant may represent to the Magistrate that a sum of say Rs. 10-12-0 is due from a passenger. According to the present provision the Magistrate can then issue a distress warrant for Rs. 10-12-0 to be realised from the passenger. It is not open to the man so charged to say “I have not travelled by the train at all”. If you simply say that the Magistrate should be satisfied, the Magistrate might ask the Station Master or the Assistant Traffic Inspector, “What sort of man is this railway servant who has complained? Is he generally honest?”. The Station Master tells the Magistrate, “Oh! yes, he is an honest man.” The Magistrate may feel satisfied by these credentials of the man who charges the passenger. The Magistrate acting on this statement of the Station Master might issue a distress warrant for the collection of the charges. I, therefore, suggest that the provision should be made crystal clear that the mere fact, that a complaint is made by a railway servant to a Magistrate asking him to realise a certain amount for the railways from a person who is alleged to have travelled without a ticket, will not entitle the Magistrate to proceed straight away for its realisation. In other words, he must hold a trial or enquiry and evidence has to be recorded, because apart from the question of amount, the question of liability also may arise. The man may say, “I did not travel by your train at all; I only came into the platform but could not buy a platform ticket as I was hard-pressed for time, or as I did not find any man at the counter. My people know that I am just coming down from the taxi.” Such a course will not be open to him if according to the provision of this Bill the

Magistrate straightaway proceeds to realise the fine on the complaint made to him by a railway servant. The man, so charged, should be given a chance to prove that he is not liable for it, or to prove how much is due from him. In other words, the fact that this is not intended to be a summary procedure,—summary in the sense of simply carrying out the behest of the railway administration,—should be clearly provided for, and for this purpose even if the wording has to be changed a little here and there, that should be done. I have suggested, for instance, the words "if on evidence to be recorded in writing the Magistrate is satisfied". I think from the point of view of legal phraseology this might do.

Then, the last point relates to the power of eviction. One can thoroughly sympathise with Government in their anxiety to drive out undesirables or delinquents who do not pay for their journeys but use their carriers. But this provision may lend itself to abuse at the hands of unscrupulous persons. It cannot be contended, Sir, that all the railway servants employed in all the different railway administrations are honest, that they are people above reproach and will never abuse the power which is conferred on them under the provisions of this Act. For persons found travelling without tickets you have already provided one remedy just referred to, that is to say, you may arrest the man and make your demand and ask the Magistrate to realise that demand on your behalf; and you may even evict them under certain exceptional circumstances. But the circumstances have to be specified. For my part I am inclined to think that no man should be let down at an unimportant road-side station. Not that you are to accommodate him or oblige him by placing him in a comfortable place, but that you are to realise from him your dues. The fact of your setting him down does not take away from you your right to realise from him your legitimate dues. While you will be at perfect liberty to do that it is equally your duty, and a duty which I believe should be provided for clearly, that he should not be placed in an altogether helpless position. In other words, you should either set him down in the administrative headquarters of a district or in any junction station, so that the man may shift for himself, or may be in a better position to pay up your dues and at the same time he may make his own arrangements for going to his own destination. For that, Sir, I have suggested that they may be set down or evicted only at a junction station or at the administrative civil headquarters of a district. Besides, Sir, my Honourable friend, Haji Essak Sait, has made a reasonable suggestion that if women and minor children, who are not chaperoned by any adult male persons, happen to be travelling without tickets, in their case eviction should not be resorted to between the hours of 6 P.M. and 6 A.M. That is good by itself but in no circumstances should anyone be set down at a roadside station. I want this particular provision to be extended to men also; that is to say, that they also should not be evicted and set down at any station other than a junction station or a district headquarters station. They may thus be enabled to pay your dues.

Mr. President (The Honourable Sir Abdur Rahim): That is a question which can be better discussed when the clauses are considered.

Pandit Lakshmi Kanta Maitra: With these words, Sir, I would ask the House to carefully consider the provisions as they have emerged from the Select Committee. I hope my friends on the Treasury Benches, who apparently are getting annoyed with me for making this speech, will take

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my remarks in good part. After all they have no constituency; we have our constituencies.

Mr. President (The Honourable Sir Abdur Rahim): The Chair does not think the Honourable Member need make any apology for his remarks.

Pandit Lakshmi Kanta Maitra: We have to explain our position to our constituencies and as this is a measure which has been hanging fire since 1936 and is going to take a definite shape today, I appeal to the Members of the Treasury Benches to pay sympathetic consideration to the suggestions made by us and to accommodate us as best as they can. They are in a position today to have their own way without having to change even a comma or a semicolon of the Bill as it has emerged from the Select Committee. But the little section of the House that is here to represent the people is doing its humble duty to its country and constituency. It is its duty to make the provisions as little obnoxious as possible and at the same time to give Government their desired weapon to be used by them, it is hoped, sparingly with care and caution. Sir, I support the motion.

Mr. Muhammad Azhar Ali: Sir, in moving this amendment I should like to say that the whole public of India is not only morally, but also materially, interested in this Bill. Both high and low, and mostly even the middle classes of India will be affected by this Bill. It is a Bill through which, so far as I have been able to ascertain, the Honourable Member wants to raise the moral standard of the Indian public. He wishes to teach a lesson on morality to India which perhaps India did not know. His object is to value and measure the morality of Indians by means of this Bill. He thinks that if this Bill is not passed by this House today, Indian morality will be considered to be very low. Sir, I submit that Indian morality is very high.

The Honourable Member who spoke before me has given illustrations of Europeans, soldiers and Government servants, who are found guilty of moral turpitude or whatever else you may call it. Sir, even those who travel in saloons may have sometimes found some difficulty with the railway officials. It is not a question of immorality: it is a question of the poverty of India. We have to see how our people suffer under your strict laws, your strict rules, and your callousness in framing rules and regulations for Indians. This is not a matter that we should pass so easily in this House. It is a matter in which everybody, not only the males, but also the females of India, will be subjected to very great inconvenience, and, sometimes, to disgrace. I appeal to every Honourable Member in this House, even to the European Members, to think about it, whether this is the time when such a drastic measure should be brought forward in this House. A Bill like this was brought before this House previously, but the Honourable Sir Zafrullah Khan thought it wise to withdraw it,—and why? He wanted that this Bill should be considered very carefully by the Legislature. This is not an easy matter. Today, of course, when the House is almost empty, you can carry any Bill you like; but I would call that immoral and an act of moral turpitude myself, if you carry this Bill today in this House. Unless you soften the rigours of the Bill, unless you provide such amendments as will satisfy the public, I think this Bill will affect every section of the Indian community. Today I may be rich; tomorrow I may be poor; but this Bill will hang like a Damocles' sword on the head of every

Indian who travels in a railway compartment. This Bill has been brought with a vengeance. Yesterday we had only two months' imprisonment; and I ask the Honourable Member why now raise it from two months, with such a jump, to one full year? And, that, with no alternative? During the interval which has passed between the withdrawal of the Bill, in 1936, of Sir Muhammad Zafrullah Khan and the present time, have the circumstances changed so much that the penalty should have been raised so high? I do not see any morality in the idea of raising this penalty to this extent. However, Government know their purpose very well. But it is only fair to inform them that this cannot be considered to be very high morality, if I may say so. You want to make a civil liability into a criminal liability, and why? These are the questions, and the very pertinent questions, that I put to the Railway Member. Why all these drastic measures? Was there any great necessity? Did the public want it? I say, "No". The public never wanted that the Bill should come in such a drastic form before the Assembly today

Mr. M. S. Aney: Does the "public" mean ticketless travellers?

Mr. Muhammad Azhar Ali: I never said that the public meant ticketless travellers. However, the point is this. Today we are about to pass this Bill in this House; and if we can take the severe portions out of it, we will be blessed; if we cannot, we will be cursed. I want the Honourable Member to remember that if this Bill is recommended to Select Committee, I am sure, the drastic nature of the Bill will be changed, and the stigma of such Bills that are being passed in this House today, when the Opposition Benches are almost empty, will be taken out. Therefore, I would like to say that the suggestions which have been made in the note of dissent by our two friends here ought to have been considered. For instance, it is true that if evidence was taken and the Railway Agents had been invited to this Committee to state what alternative steps could be taken, it would have been a wise step to take. It is said in this note that these points could have been so discussed :

- (1) How we can stop re-selling or re-using the second half of return tickets.
- (2) In what manner travelling in upper classes at night without ticket may be minimised.
- (3) How to prevent the railway employees from travelling without ticket or misusing their privileges.
- (4) What procedure should be adopted in case of persons who have no money and for whom imprisonment will have no deterrent effect, such as beggars and *sadhus*.
- (5) Checking the tickets of upper class passengers whose servants are sometimes better paid than the ticket examiners.
- (6) The control of traffic and the examination of tickets during the *melas*.

I think these were very pertinent suggestions that could have been ascertained from the Railway Agents; and if they could have suggested an alternative, it would have been very much better; but I find there is such a hurry to carry the Bill in this House today. We know it for a fact that

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formerly the salary of these ticket checkers rose to about Rs. 400 or perhaps a little less; but now it has been reduced to Rs. 200. It does not stand to reason. These are the questions which should have been considered. If you allow these people, who are low paid, to arrest and to charge from the public, then you encourage a sort of corruption. We ought to put such people above these things, and we want that the rules that prevailed formerly about the pay of these people should be reconsidered. These are the questions involved in this Bill. It is not merely a question of increasing the income in the budget, and, therefore, instead of paying it we should realise more from the public. This should not have been the guiding and ruling principle of this Bill. With these remarks, I hope, my motion, that the Bill be recommitted to a Select Committee, would be accepted.

Mr. Lalchand Navalrai: Sir, no one doubts that there is ticketless travel on railways. No one doubts that that is an evil. No one doubts that it should be stopped in some better way than that proposed by this legislation. I have been observing this measure discussed from the very beginning when the first Bill was introduced—though not the same measure but a similar one. In the attempt to put down ticketless travelling, very stiff and drastic measures have been proposed from the very beginning. That brought numerous objections to it, and it was protested that the Government was exercising its powers with a vengeance in attempting to stop the ticketless travellers. Whenever I spoke on this subject, I always pointed out in the past that the Government forgot their own duties in the first instance, and that the remedy they were applying was quite wrong. The remedy of applying stiffer legislation to stop this evil will never succeed in a matter like this, specially in India. I say specially in India, because it cannot be denied that there is ticketless travel in other countries as well, but in India the biggest sinners are beggars and mendicants. Most of the ticketless travel that goes on on our Railways can be easily attributed to them, but apart from this class of people, there are many others also who travel without ticket, and it can be successfully proved that the latter class are not doing it fraudulently, even in case of beggars and mendicants no such question of fraud can arise

Mr. M. S. Aney: Why?

Mr. Lalchand Navalrai: Fraud as defined would mean an intention to deceive. There is no intention to deceive here. The point here is, it is not merely entering a compartment that makes it a fraud. If that is so, then there are two clauses here, sections 112 and 113,—one who enters a compartment without ticket comes under section 113, and one who comes under section 112 will also enter the compartment without a ticket, but the Railway will have to prove in case of beggar also a fraudulent intention that the man who enters the compartment has done so with an intent to defraud or to deceive the Railway. It may be said that one can easily understand what fraud is, but fraud is not defined anywhere, it is not defined even in the Indian Penal Code. It only defines an intention to deceive, and it is for the prosecution to prove what is the ingredient of deceit in it

Mr. M. S. Aney: If he intends to travel without a desire to pay, it is an offence, it is a fraud.

Mr. Lalchand Navalrai: How are you going to prove that any one who gets in has had no intention to pay?

Mr. M. S. Aney: Because he has no money in his pocket.

Mr. Lalchand Navalrai: How is that a fraud according to this Act? In the first Bill it was stated that the burden would be upon the person to show that he had no money, and it was held that such a provision should not exist at all. Here the section reads thus: "If a person with an intent to defraud". Now, to prove an intent is not easy, unless, as it happens as it does now and in some court. I shall be very sorry to hear that if my friend, Mr. Aney, endorses it. What happens now in practice is this. You catch hold of a man who travels without a ticket, take him before a magistrate, and the magistrate takes it for granted that the accused entered the compartment without a ticket, and that alone proves fraud, and the poor people are punished for it. Therefore, it is very necessary to prove that the person who entered the compartment had an intent to defraud the railway, as there is difference in the two sections 112 and 113

Maulana Zafar Ali Khan (East Central Punjab : Muhammadan): Is there any difference between defraud and deprive?

Mr. Lalchand Navalrai: Merely depriving a man of his dues is a civil wrong. Supposing you don't pay the rent of a house, then, it is a civil wrong. My whole point is, it is very difficult to prove that a man entered the compartment with intent to defraud the railway, unless it can be held that merely entering the compartment is an offence in itself. The Honourable Member in charge cited two examples,—one, the intent may be inferred if the man has no money. The man may have money, but he entered the compartment for some other reason, that is to say, he reaches the station just in the nick of time and had not sufficient time to get a ticket. But if such a person happens to be a beggar, the magistrate will say that the accused being a beggar,—he entered the compartment fraudulently. That will be very wrong. Then, take the other instance about concealing himself. How can one conceal himself? He enters the compartment so openly. How can it be said to be fraud? If it is found that a man who has been caught has been habitually travelling without ticket or that he had been convicted of such an offence before, in such a case it may be held that he entered the compartment fraudulently. The object here is to catch hold of mendicants and beggars and bring them under the purview of section 112 which would be absolutely wrong. These people have been travelling for years without ticket, it has been more or less a tradition with them to go to pilgrimages. These people travel by rail, without ticket, sometimes on foot also, and in the case of these people it can never be said that they had a fraudulent intention to deceive the railways. Intent is quite different from only actually doing a thing. Therefore, if it is intended to penalise these people, the remedy proposed is not the right remedy, because they have no intent to deceive the railway. On the other hand, there is not enough vigilance on the part of the railway people to see that these beggars and others of this class do not get into the railway compartments. The sinners are the railway people themselves who out of sheer sympathy allow these people to get into the compartment. Besides that, what is the obstruction to these people getting into the compartments

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where the railways have not provided any fencings even to the platforms? The platforms in most places are quite open, the doors of the stations, too, are sometimes quite open, and these people get in, are not these temptations to these people to get in?—and then you charge them with fraudulent intention under section 112 and sentence them to one year's imprisonment. Sir, section 112 is not too drastic to apply.

Then, coming to the rigour of the Bill, there were many points that should have been considered by the Select Committee. The Select Committee as it was constituted consisted of three Railway Officers,—I say the Leader of the House also was once in charge of the Railways and he had himself put in a Bill and no one can expect any sympathy from him. Coming to the present Railway Member, he holds his own and wants that ticketless travelling in any manner should be stopped even without their own men, their own employees taking proper precautions. Then the third member was Mr. B. M. Staig. I do not want to cast any aspersion upon these men, but we find two elected Members of the Select Committee, Dr. Sir Ziauddin Ahmad and Mr. Deshmukh, differing on many points and putting in a very long Minute of Dissent.

Sir Muhammad Yamin Khan: What about Mr. Shahban?

Mr. Lalchand Navalrai: I am coming to him now. You want that the Khan Bahadur should be mentioned in this connection.

An Honourable Member: Don't drag him in.

Mr. Lalchand Navalrai: He was there, and how he came to be a party to agreeing to one year's imprisonment being given to these people I myself cannot possibly understand. I know him for a very long time and I know he should have, if not sympathy, a sense of justice on this question. Still we find that he has also agreed and quietly put his signature over there. Sir, my point is this. Excepting the question of providing for a certificate, on all other points these two dissenting Members have been overruled. As regards the question of punishment, I do not know how it was raised from two months at once to one year. In the former Bill it was two months. It cannot be said that the House agreed to even motion for two months, on the contrary, it was urged that only punishment in the shape of fine should be retained. It is not shown now that since the earlier Bill ticketless travelling has increased. No facts and figures have been given in order to compare what was the number of ticketless travellers in those days, and how far that number has increased now. Therefore, there is no justification for increasing the punishment to one year. In the Indian Railways Act itself there are other offences which are more heinous than this, and yet the punishment prescribed for them is only fine. Section 116 says :

“If a person wilfully alters or defaces his pass or his ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.”

To alter tickets is a more serious offence, it is committing more than fraud. It is cheating, and for that, the punishment is only Rs. 50 fine.

Whereas in the present case it would be even difficult to prove that they had done it fraudulently. The next section says :

"If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, sub-section (2) he and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees,"

The idea is that Railway being a commercial concern, no harsh provision should be put in, which might alienate the feelings of the public, and with that intention the original Railways Act has been so framed as to be lenient with regard to punishment. But let me in fairness also bring to the notice of the House another section where one year's imprisonment is provided, but the point is that that offence is a very heinous one, and much more offensive than the one we are now dealing with. Section 129 says :

"If a person rashly or negligently does any act or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

There is a very great difference between this offence and the offence of ticketless travelling.

On the question of certificate. I submit that unless certain rules are framed and instructions are given to the employees of the railway as to the manner in which this should be carried out, this provision will not be at all fruitful. The Select Committee did not accept anything else than this. They say in the Report :

"The principal amendment made by us in the Bill is our provision that no excess fare shall be payable by a person travelling without a ticket if he has obtained from a railway servant permission to proceed without having a ticket. For this purpose we have introduced in clause 2 the provision providing for the grant of certificates which was included in the Bill of 1936, and have added a proviso to that already appended to section 113 (3)."

With regard to this, I feel that this will not be practicable. At present even the permission that sometimes is asked for and is given by the guards is not being given by the ticket inspectors or ticket collectors who are in the train. They refer the man to the guard. What happens is that the man is not able to intimate to the guard that he has come at the nick of time and that he is travelling without a ticket and will pay at the next station. The guard remains far away and the ticket checker who comes and finds that a man is entering without a ticket cannot permit him to do that. There is great difficulty in that. He asks for a certificate and there is no time for giving it and he may be said to have fraudulently travelled and incurred the penalty. This provision is a very good provision but in order to see that this provision is acted upon, certain instructions should be given that when a certificate is asked for it should be given at least at the next station and he should not be considered to have travelled without ticket.

An Honourable Member: Provide for it in the law.

Mr. Lalchand Navalrai: It may be provided either in the law or in the rules. Then, further, I do not understand that if a man comes at the nick of time informs the guard or the railway subordinate that he is travelling why in those circumstances should he be subjected to a penalty of one-sixth. If he informs the guard then it is his duty to give him a certificate

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and why should he be charged this one-sixth and I hope this point will be made clear by the Honourable the Railway Member. The proviso says:

"Where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna or two annas whichever is greater."

Then another proviso follows. With this proviso there, I do not understand why the first should remain.

An Honourable Member: When the certificate is given, there should be no charge.

Mr. Lalchand Navalrai: There is no sense in having both. This anomaly should be removed.

Then there is the question of taking the man to the magistrate to recover the fine. This matter has been very ably put before the House by the Honourable Mr. Maitra. He is brought before the magistrate with a direction to the effect that such and such a man has incurred a fine and the magistrate shall collect the fine. I submit this would be an unjust order. The magistrate must make a judicial order. You cannot simply give a direction that he should recover the fine in a particular manner. I submit, therefore, that this provision is also very harsh. I would call it an illegal provision; therefore this should be improved. Now, imprisonment in default is being provided. Now, I submit that for recovering the fine there is a particular procedure prescribed in the Criminal Procedure Code and why should we depart from that and give punishment in lieu of the fine. To make a general provision like that is not correct. With regard to the removal question, I submit that consideration should be given to this fact that power is being given here not only to the railway subordinate who is to be authorised by the particular authorised officer. He can also call any person to his aid and what do we find in these days. The police officer or the constable present is being called for and that creates trouble. The constable comes. He asks that man and generally a quarrel or a disturbance occurs. Therefore, it should not be the police officer who may be called for. It should be that another authorised officer is called for to help him, not any man that is present on the platform. He may be his enemy. This also requires to be improved. I have put in many amendments and I do not want to take up more time of the House on this general discussion. The point is very plain that the Bill still remains drastic and harsh and that harshness should be removed. There is a suggestion that this Bill should be recommitted to a Select Committee. There is sense in that, in this way, that the Honourable the Railway Member is inclined to minimise the harshness of the Bill. For that purpose it will be much better that this Bill is again considered by the Select Committee and they may come to a certain conclusion which may be acceptable to the House.

Mr. Muhammad Nauman (Patna and Chota Nagpur cum Orissa: Muhammadan): Mr. President, I think it may be rather too late for me now to say much against the principle of the Bill as it has emerged from a Select Committee and it is before us now for consideration. This Bill has been presented to us for final sanction and for making us a party to enacting it into law, whether we like it or whether we do not like. The

House as it is constituted today can certainly pass any legislation that may be construed to be in the interests of the present Government; it may not even actually be in the interests of the Government but so long it is thought to be in the interest of the Government by the Member in charge of the portfolio today. First of all, I would like to say this. I am not speaking as a big lawyer but only as a man of ordinary intelligence and ordinary intellect anxious to understand the proposal. I would like the Government to say whether there is any legislation existing in any part of the world similar to this. Is there any legislation like this in South Africa, in Canada, Australia or anywhere else? Are there any figures to show the percentage of ticketless travelling in those countries and that have they passed legislation to stop same? If there are no data, then why Indians alone should be considered a people for whom this Bill should have been introduced. I want an answer to that from the Honourable Member first. By accepting the principle of this Bill, *prima facie* we accept that the people of this country are dishonest and that they have been defrauding the railways, the public carriers of this country of a certain income and that is why the Government of the country have thought it necessary to bring in a measure with such stringent provisions, to be put on the Statute-book of this country. I want an answer; I want that the House should be satisfied on that point; at least I think it is the right of the representatives of the people to be convinced on this point before we proceed further.

Next, Sir, are Government convinced of the fact that legislation of this

nature would eliminate all possibility of ticketless travelling in this country or of all possibility of recovering present loss in the railway revenues of the country? Is there any guarantee to that effect? My feeling is this—and that is the feeling certainly of many hundreds of thousands of Indians—that instead of eliminating the chances of “Ticketless Travel” there will remain quite a large number of people travelling without tickets in this country even if Government prescribed penalties under sections 302 or 304 of the Indian Penal Code where punishment may be of transportation and death. Even then there will remain beggars, *sadhus* and mendicants who are so fed up with their wretched lives that they would rather end their lives somewhere than arrange for funds for their tickets. I would like to know whether the Government of India have tried to make any sort of census report, to find out how many people could afford to pay actually and how many of them were such as would not be able to pay in spite of any legislation. Is there any stock-taking of that nature? Are the Government of India alive to that situation, *viz.*, that in spite of any legislation in this country, the situation would remain to a very great extent the same as it is today? Have the Government of India been able to convince themselves that legislation of this nature would at all help them even inasmuch as Railways would at least be able to eliminate it to the extent of 90 per cent. or 80 per cent. or 75 per cent. or anything like that? If we are merely going to legislate for a small number of people, say about ten or fifteen per cent. I think that is most futile.

Now, Sir, the third argument on which probably I need not dwell much is the question of the Railways Act of 1890. Different interpretations have been given upon that, and these have been explained by my friend, Mr. Maitra, and we know what the different High Courts thought of same, and

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to say that this legislation does not go beyond the Act of 1890 would probably be saying something like calling black a white or white black. I cannot understand what is the use of drafting this new legislation if it is covered by Railway Act of 1890. That law is there; you can do what you like: it gives you all possible powers that you may require, and you need not bring in further legislation at all. Then another point and an equally important point is this. Is there any difference between a passenger travelling without a ticket or without a permit or a pass on a railway and a passenger who does so on a steamer, a motor bus or on any other public transport or public carrier? Why should not legislation be put on the Statute-book of this country to help all the other organisations who are doing transport business also, viz., whether running a steamship company or running a motor bus service or running taxis? What arguments can you bring forward to say that as regards the passengers travelling without a ticket on railways their liability of a civil nature should be converted into a criminal liability and should be taken to be a cognizable offence, whereas travelling without a permit or a ticket by a steamer or any other public carrier would continue to be a civil offence? The whole purpose of this Bill is described to be to prevent the loss of revenue on the railway account. They say that the Government are losing, and the situation has reached a point where nothing can help except legislation of this nature.

Now, I want to ask, on the one hand, why was this allowed to stand over for fifty years since the railways have been introduced into this country? Has there been much ticketless travel in this country only since the last five or ten years or say even the last twenty years? Was there no ticketless travel on the railways when they mostly belonged to the Companies? You took no notice of the loss that the Railway Companies were losing between 1860 and 1920? You never thought that they should have been given some rescue? You never thought that that legislation was at all necessary, and for fifty years you continued it like that? You thought that legislation of that nature was not warranted in this country for fifty years? For fifty years you thought it would be going absolutely against the morale of this country and would degrade the people of India in the estimation of the world.

The Honourable Sir Andrew Clow: Sir, I am not sure to whom the Honourable Member has been referring in saying "you thought this for fifty years" and so on, but fifty years ago I was not thinking of this subject.

Mr. Muhammad Nauman: When I was saying that, I was meaning the British Government and you, Sir, as the representative of the British Government now.

The Honourable Sir Andrew Clow: I suggest, Sir, that the Honourable Member might address the Chair.

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

Mr. Muhammad Nauman: The Honourable Member in charge, fifty or forty or thirty years ago, of the Government for Railways did not think

it at all necessary to bring forward legislation of this nature, and I think there must have been many memorials by the Railways presented to the Government, and there must have been many protests made from the different Companies of the Railways and there must have been a lot of correspondence on that matter at that time but the Government of India at that time thought differently and said, "no, we cannot go so far, we need not do it for Railway Companies". But now the Government of India are prepared to bring forward such legislation. Now, Sir, the Government of India say that the Railways are a commercial concern, they are a national asset worth Rs. 750 crores or so and we ask "what do we get out of that"? Now, if there is any loss to the general exchequer, the country is asked to meet the loss, and we have to pay from the general taxpayers' money whatever losses the different Railways may make from time to time? If you cannot give a guarantee that the Railways will remain a commercial institution, that the Railways will not be allowed to ask the general exchequer to make good losses at any time, then what right have they to come forward and ask us for legislation of this nature, even if there is a loss we are a party to that loss and we are going to pay you money and the Government of India need not bother their heads about that? If there is a loss of five crores of rupees to the Railway exchequer, we as partners of the general exchequer are prepared to pay that money. Let hundreds and thousands of people travel without tickets: what does that mean to you? Are the Government of India prepared to say that in no case at any time, whether lean time or bad time they will never come up to the general exchequer and say, "we want some money from you to meet such and such a deficit in the budget which has gone wrong or such and such affair in which we are placed in a difficulty"? If they can give a guarantee to that effect, then I can understand. According to us, there the taxpayer's position would only remain that of a travelling client or that the travelling public would be the clients of the Railway Company and nothing else, but you are cutting it both ways. On the one hand, you want legislation to be put on the Statute-book which will condemn the whole country, the morale of the whole country, and on the other hand, you also want that whenever you are in trouble, whenever there is a deficit Railway Budget, you can merely come to the general exchequer and say, we want a crore of rupees or two crores or five crores or ten crores from the representatives of those taxpayers against whom you are now legislating.

I have not taken any brief for the ticketless travellers and I do not for a moment say that travelling without ticket is a virtue. I do not say that it is not a vice and that it should not be punished. I do not want to support a ticketless passenger in any possible manner, but I only want to request the Government through you, Sir, that they ought to legislate in a manner which would not condemn this country and which would not lower the entire morale of this country in the eyes of others in this world. I would only request one thing. The principle of the English law has been that it is better that nine criminals should be let loose rather than one innocent man be wrongly punished. That principle of law, that principle of equity, that principle of jurisprudence has been flouted in this Bill. Can the Honourable Sir Andrew Clow give us a guarantee that a thing like that will not happen? Our fear is that the railway employees who are getting hardly Rs. 80 to Rs. 40 a month will turn into police constables in this country. We know what morale they have in this country. They are our own men and we know them well. You may

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have a different angle of vision and you may have a different pair of spectacles on your eyes and, therefore, you may not be able to see things in their true colours, but we Indians, who are the representatives of the public in this House, know what class of people you are employing and we know what sort of treatment they give to the passengers and what circumstances of hardship this law will create. We can very well foresee what is going to happen to the innocent and ignorant honest travellers after this weapon has been put in Railway hands. That is my argument. Does not the Honourable Member know himself that in many cases it has happened, at least in the case of side stations, that a particular station master, either because he is pressed for time or for some other reason, which I do not want to insinuate here, could not issue tickets to, say, five persons? Then, the timings of the trains are sometimes inconvenient; at most stations they stop only for three minutes. The guard may be so busy that he may not be approached by the travellers at all and even if he is so approached, he may not be able to note down their names or recognise their faces at the next station. Yet these innocent persons will be prosecuted under this Bill. They will be put to all sorts of hardships and will be labelled as thieves and fraudulent travellers.

Now, Sir, speaking on the principle of the Bill itself, I have said what I had to say. I certainly think that the Government will be well advised if they agree to recommit the Bill to a Select Committee in which some sort of unanimity might be reached between the representatives of the people and the Government. I can assure the Honourable Member that so far as the question of hating the ticketless travellers is concerned, we have got the same idea as the Government. We hate them and we think that it is a great vice and should be got rid of. At the same time, we do not want that you should legislate in a manner in which innocent people might be prosecuted as criminals. It is for that reason that I suggest that the Bill ought to be re-committed to the Select Committee.....

Mr. President (The Honourable Sir Abdur Rahim): Does the Honourable Member wish to finish his speech now?

Mr. Muhammad Nauman: No, Sir, I will take a few minutes more.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can continue his speech in the afternoon.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Mr. Muhammad Nauman: Sir, I need not enter any more into the discussion of the legal philology which I think my other Honourable friends have done most elaborately. I have tried to point out also to some extent in the first part of my speech the difference between "evasion" and "defrauding". The only position to which we come is this that the

Honourable Member for Railways is anxious to realise money to which he holds a pious hope by this legislation. He is not conversant with the situation or the circumstances in the country that are appertaining to ticketless travel. In reciting the number of ticketless travellers he did not explain to the House any of the circumstances and conditions of the people and the circumstances of the people who were found ticketless. The only thing that he gave to the House was that a number of people was detected without tickets. He did not get any report from the General Manager of the Railway or from other employees of the railway who were responsible for detecting these ticketless passengers as to the circumstances in which they were detected and the circumstances in which they were allowed to travel without ticket. There is no report available to the House as to why people who could afford to purchase tickets and who had no intention of defrauding the railways were found travelling without tickets. The only position I have been trying to indicate to the House was this. By trying to legislate like this and by trying to punish the so-called criminals, the Bill is trying to endanger the safety of hundreds of honest passengers who without any intention on their part to defraud the railways might be compelled by circumstances to be victims of the hardships proposed here.

The Honourable Member knows full well the calibre and the character of the railway employees who are already dissatisfied with administration and are humbly paid. They will be in charge of this act and will be deputed to check the passengers. Normally the ticket checker gets only Rs. 30 a month and you can very well imagine cases in which ticket checkers unnecessarily harass passengers. The other circumstance which has not been brought to the notice of the House is the question of fencing. The fencing facilities on the railways are not adequate. Moreover, recently even the fencing has been removed from many stations as they curiously thought they were not of much use. The point is whether all other circumstances are not contributing to the encouragement of people who are defrauding railways without tickets; or is it only this particular provision which can stop this evil if you allow those other circumstances to remain as they are and which will naturally induce people to travel without tickets in spite of this legislation. This legislation will entangle honest men into trouble which I am trying to point out to the House. The issue of tickets on the roadside stations as I have said earlier, is an extremely difficult affair in some cases. Normally the station master is in charge of every thing in some stations. Being a single man and being pressed for time or for some other reason, he is not in a position to issue tickets at all times and sometimes honest and respectable passengers have to enter compartments without tickets. I remember, Sir, even in a place like Patna Junction when I was travelling by 13 Up which reaches Patna at 12-28 A.M. at night, when my Secretary asked for a ticket at about 11-30 P.M. he was refused because the Booking Clerk said that the train would arrive only at 12-28 and that, therefore, he could not issue the ticket till twelve midnight is passed. I do not question that particular reason because the date has got to be changed after 12 o'clock. But Honourable Members can very well realise that even in such cases where passengers reach the station early enough, there is a possibility of their not being able to get tickets before the train arrives because of pressure of work on the part of Booking Clerks or for some other reason. Other Honourable Members have already pointed out that whenever they approach the Guard or the Ticket checkers, normally they are either rushed for want:

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of time or they are not in a mood to help the people and they allow people to go their own way without tickets and to take the consequences afterwards. In those circumstances, what is the security, what is the guarantee even for an honest man who may be in time at the railway station and may not be able to secure tickets? After this he will be a victim to all penalties. What is going to happen to him? I have known instances in many stations that honest passengers are compelled to travel without tickets owing to certain circumstances. I am afraid after this legislation, such instances might increase. That is one of the arguments which I want to advance to the House and I would ask the Honourable Member to reconsider his opinion in the light of these things which I am saying. I do not think he is not justified in trying to efface this evil of ticketless travel from this country. I am equally anxious that this vicious practice of ticketless travel should be put to an end. At the same time, I do not like that any legislation should be passed which would be derogatory to the country and would put this country to the position of having a legislation which no other country has. I am not prepared to accept the principle of cognisable offence for evasion, for a civil liability.

In the Select Committee, we have seen that out of four elected Members, two have appended a Note of Dissent. They have said very elaborately what they thought of the Bill and what should have been done before the Bill was placed before this House. In the circumstances, it means that 50 per cent. of the elected Members were definitely of the view in the Select Committee that the Bill in principle was not right and some other method should be adopted by which this practice can be checked. I do not want to blame either Government or the Honourable Member, Sir Andrew Clow, for their anxiety to check the "Ticketless Travelling" but at the same time I do not want that such stringent laws should be made for this purpose. We should, therefore, ask Government to send back the Bill to the Select Committee and arrive at a compromise which would be acceptable to every Party in this House and they will do something which will be good for the people of the country. None of us have any personal prejudice in the matter; we have to see what effect the Bill is going to produce and what repercussions it is going to have in other parts of the world as to the standard of morality here when legislation of this kind is thought necessary. Sir, I request the House to send it back to the Select Committee where agreement can be reached between Government and the elected section of the House, to which we would be able to give our sanction with a full sense of responsibility.

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, when a Ticketless Travel Bill was placed before this Assembly a few years ago I did not take any part in the debate nor have I taken any part in the debate on the present Bill until now. The reason is that I had and still have the fullest sympathy with the main object of such measures, but I wanted to keep my mind open as regards the methods to be adopted in securing the object.

Sir, I regard ticketless travel as a bad thing and I would do my best to help those in authority to eradicate this evil. But I am sorry I am unable to see eye to eye with Government as regards the methods which they wish to adopt. What are the causes that give rise to travelling without tickets? In this connection you will have to draw a distinction between those persons who travel on railways without tickets with the

intention of defrauding the railways, and those who are found to be without tickets in some special circumstances. It is conceivable that in some special circumstances persons may not be able to produce any tickets or persons may be found to be travelling in compartments for which they have not paid adequately. These cases arise from various circumstances. It may be that there are large crowds gathered before a ticket window, and as the time for the departure of the train comes near some persons find it necessary to board the train without purchasing any tickets. It may also happen that some persons arrive at the station too late to enable them to purchase tickets and they board the train because they may find it very urgent to go to some place where their presence is needed. It may also happen that a person who has purchased a second class ticket finds no accommodation in any of the second class compartments and is obliged to travel in a first class compartment. In all these cases it may be made possible for such persons to pay the regular fares for the journey undertaken by them and no penalty should be imposed. I shall give you some instances from my experience in this regard.

I may say at the outset that I was an educationist for more than a third of a century and my vocation taught me to discourage anything which had an immoral aspect about it; and as a public man I would regard ticketless travel as a bad thing because it deprives the State of a portion of its legitimate revenue. Therefore, I am in favour of taking adequate and proper steps to stop this evil; but, at the same time, I must insist that the measures should not be such as would lead to harassment and oppression of innocent people.

I may now relate my personal experience. In 1916 I was returning from England, during the period of the war, and when I came to the Bombay station I was told by the Station Master and all the other authorities that no berth was available by the mail train and no tickets were to be sold. I told the Station Master that I wanted to go to the platform with my luggage and in case any passenger who had booked his berth failed to turn up I would take his place. The Station Master did not object to this proposal and I went to the platform and waited till the last moment. I found that all the berths were occupied—both first and second class; and as I was going about from compartment to compartment, one gentleman took pity on me and asked me what I wanted. I said "I have just returned from England after two years' stay and I want to avail myself of the earliest opportunity to reach Calcutta in order that I may see my friends and relatives". In this connection, I may say that that was a very dangerous time for travel. A few weeks before that several boats had been sunk by the enemy, and a person with a name somewhat similar to mine—one Mr. Banaji, a Parsi—had been drowned; and my people were very anxious about my safety and I was also very anxious to see my friends and relatives again. At the last moment one gentleman told me that he was going only a short distance and would be vacating his berth in four or five hours and would gladly allow me to sit on his berth for that time so that, ultimately I might occupy it myself. I immediately ran to the guard as the train was about to start and he said: "Yes, you can do that and you may purchase your ticket at Thana station." I did so. There was no difficulty. Now, was there any moral delinquency on my part at that moment?

I shall give another instance. On one occasion I was going to Calcutta from Hazaribagh; at Hazaribagh Road station at about 11 o'clock at

[Dr. P. N. Banerjea.]

night I found that all the second class berths were occupied, but there were some vacant berths in the first class compartment. I told the guard I must avail myself of that train because there was a meeting of the syndicate of the Calcutta university fixed for the following day and that I would pay the first class fare. He said: "You may do that, and when the train reaches the next station I will arrange for a first class ticket being given to you." So I entered that compartment. On another occasion, I was going to Calcutta from Puri, the second class booking clerk to whom I had given some currency notes told me he had no change: the train was about to start and I said: "I will get the change later, but give me a ticket." He hesitated, but when I spoke to him rather sharply he gave me a ticket. I gave him my visiting card and I said I will get my change somehow. I got the ticket and boarded the train: soon after this the booking clerk came running—he had seen that I was a Member of the Legislative Assembly—and gave me the change. So the difficulty was overcome.

I say, therefore, that circumstances do arise when people are compelled to travel without tickets or in classes higher than those for which they have paid. Such people should be treated on a basis different from those who wish to defraud the railways. How can this be done? I think the Select Committee in this respect have made matters worse. If the subsections introduced by the Select Committee had been there it would have been impossible for me to travel on those occasions which I have just mentioned. The rule should be that if a *bona fide* passenger, who has no intention of defrauding the railway, informs the guard or the station master or the ticket collector that he would purchase a ticket later on, then no penalty should be imposed on him. As regards persons who intentionally travel without tickets, they ought to be dealt with in a different fashion. They must be punished and punished adequately. They must be punished in a manner that would deter other persons from following the same course. But while I suggest that punishment should be of a deterrent nature, I do not think the punishment should be too severe. The science of penology has made now considerable progress; and I believe Sir Andrew Clow knows that too severe punishment defeats its own object. A little more than a century ago, in England, the penalty for shop-lifting (or stealing from shops) was capital punishment or death penalty; and what was the result?

An Honourable Member: No.

Dr. P. N. Banerjea: An ignorant person should not say 'No'. Take it from me that that was the law in England a little more than a century ago. And what was the result? The result was that witnesses felt sympathy for the person: they did not want to give evidence against the criminal and the juries did not return a verdict of guilty and the judge also sympathised. So this punishment was withdrawn. I do not suggest that the present case is on a par with that, but I find that the penalties which are being prescribed are too severe. If the Government think that the present Act does not provide adequate penalties, let them increase the measure of the penalty, but let not the penalty be too severe. If the penalty is made too severe, what is likely to be the result? The result will be that witnesses will not perhaps agree to give evidence. It is also

possible that the magistrate himself will feel pity and acquit the criminal. Therefore, what I suggest is that the punishment should be adequate but not too severe.

Sir, there is one penalty provided in this Bill which, it appears to me, might give opportunities for the ill-treatment of passengers, and this penalty is of eviction. If this punishment is not inflicted in a very reasonable manner, then it is likely to lead to a great deal of oppression and harassment. Sir, the bulk of the people of this country are illiterate,—thanks to the British Government which has ruled this country for nearly two hundred years. Ninety percent. of our people are illiterate. I have seen on many occasions that ignorant people get into the second class compartment without knowing that they are not entitled to travel in those compartments. Just before the departure of the train, they get into a second class compartment because they do not find any seats in the third class compartments. I have very often sheltered these people,—I frankly say so,—otherwise, if I had not sheltered them, most of them would have lost their lives.

There is another difficulty, Sir. Now-a-days it is very difficult to distinguish between a second class and a third class compartment from the outside

Sir Abdul Halim Ghuznavi (Dacca cum Mymensingh: Muhammadan Rural): Which Railway?

Dr. P. N. Banerjee: On the East Indian Railway and on most of the Railways the colour of the compartments is the same, and the illiterate people cannot read the figures I, II and III which are written outside. At times I myself find difficulty, because the figure I or II is written on the top. The illiterate people cannot read these figures, and you should be compassionate towards them if by mistake they get into a second class compartment when holding a third class ticket. Sir, it may happen that in trying to evict ignorant people from the compartments which they are occupying they may be placed in great difficulty. At an out-of-the-way station a person may be evicted from the railway train,—he does not know where to go, and this difficulty is increased manifold in the case of women and children. So I suggest that women and children should not be evicted from the railway carriages if they are not accompanied by their male relations or friends

Sir Abdul Halim Ghuznavi: What are they to do? To let them remain?

Dr. P. N. Banerjee: When they reach their destination, charge them the regular fare. I don't say you should allow them to travel free all the way, but eviction of a woman in the course of a journey or of a child would be very wrong; it would impose a great deal of hardship on the woman or child.

Then, Sir, it is very often found that ladies when travelling with their male relatives do not carry their tickets with them. Their tickets are with their male relatives who are in a different compartment. If you evict the ladies because they do not carry their tickets with them, that would be a very wrong thing to do. If the provisions of this Bill are enforced in a manner which would not be reasonable in the circumstances, great hardship will arise. I, therefore, appeal to the Honourable Member

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in charge of the Bill to take a very reasonable view of the matter. I admit that he has on many occasions been a reasonable man; on many occasions his attitude has been reasonable,—not always. When the Motor Vehicles Bill, for instance, was being considered in the Legislative Assembly, I found that he took a reasonable attitude in many instances. Even now, I think his attitude is more reasonable than that of some of the other Members of the Treasury Benches. Comparisons are always invidious, and sometimes they may be odious, but I do frankly say that he is on the whole a reasonable man, and I hope that on this occasion he will not be guided by any passion or any sense of prestige in order to have the Bill passed in the form in which it has emerged from the Select Committee.

I am sorry to say that the Select Committee has not improved the Bill to any substantial extent. In one respect the Select Committee has made matters worse. However, there is enough time now in the Assembly to rectify these errors. Let the clauses of the Bill be carefully considered and let all Members of the House, both on the Government side as well as on the Opposition side, apply their minds to the question of the objects and methods to be adopted in fighting the evil of ticketless travel. It is an evil, but we must use proper methods in order to fight it. You should do all you can, first of all, to prevent those who travel without tickets, you should punish those adequately who defraud the railways, but you should not oppress or harass innocent people. If you accept these principles, I am sure there will be no difficulty in the members of the different parties uniting to help the Government so as to bring out a good and proper measure from the deliberations of this Assembly. With these observations, Sir, I support the motion.

Sir Abdul Halim Ghuznavi: Mr. Deputy President, I am not a professor of legal history as my friend who just sat down is, but I do not know that shop-lifting, as my friend said, in England used to be penalised by death sentence but I do know that sheep-lifting was punished by death. Sir the motion that we have been considering the whole of this morning is as follows: "That the Bill be re-committed to 'the Select Committee' ". There is an amendment to the motion for taking the Bill into consideration. We are considering both the motion and the amendment: Member after member has spoken on the amendment.

An Honourable Member: No.

Sir Abdul Halim Ghuznavi: My friend says 'No'. I have been listening since morning here to all the speeches, and every one who has spoken so far has done so on the amendment, except perhaps my friend who has just sat down.

Another Honourable Member: Pandit Maitra also.

Sir Abdul Halim Ghuznavi: He was not so clear as my other friend had been, but all the other Members said that the Bill be re-committed to the Select Committee.

I will take this amendment first, of re-committing to the Select Committee. I am opposed to it, I may say at once. My Honourable friend,

Dr. Banerjea, has already said that the Select Committee has made the Bill worse, and what earthly use would it be to re-commit that Bill again to the same Select Committee? The amendment is, "That the Bill be re-committed to the Select Committee". Not "a Select Committee" but "the Select Committee". There was the composition of the Select Committee, my Honourable friend wants us now to send the Bill back to the same Select Committee. What is that "the Select Committee"? Does the Honourable the Mover of the amendment think that the Honourable Sir Muhammad Zafrullah Khan will change his mind?

An Honourable Member: Why not? (Further Interruptions).

Sir Abdul Halim Ghuznavi: What is the idea of sending it back to that "Select Committee"? Does my Honourable friend expect that Sir Andrew Clow will go there and accept a different point of view to what he has already done?

Mr. Muhammad Azhar Ali: We consider Sir Andrew Clow to be more reasonable, and you not.

Sir Abdul Halim Ghuznavi: As for Dr. Sir Ziauddin Ahmad, my Honourable friend over here has stated that he has made a bungle, and he will bungle again.

Dr. P. N. Banerjea: I did not refer to Dr. Sir Ziauddin Ahmad.

Sir Abdul Halim Ghuznavi: You referred to the Select Committee, of which he was a member.

Mr. Muhammad Azhar Ali: I am prepared to include your name if you want, to bungle if you like.

Sir Abdul Halim Ghuznavi: I would ask your name to be included. The whole of this morning, for at least three hours, I have not heard one single sentence which is worth considering.

Mr. Muhammad Azhar Ali: But you were sleeping.

Sir Abdul Halim Ghuznavi: My Honourable friend behind was sleeping, snoring, not I. I should like to ask my Honourable friend, Dr. Sir Ziauddin Ahmad, one question and he will kindly reply. Are you or are you not in favour of the principle of this Bill?

Mr. Deputy President (Mr. Akhil Chandra Datta): Let the Honourable Member address the Chair.

Sir Abdul Halim Ghuznavi: I want to ask my Honourable friend, Dr. Sir Ziauddin Ahmad, one question, and that is, is he or is he not in favour of the principle of this Bill?

Dr. Sir Ziauddin Ahmad: A person asked another person, "have you stopped beating your mother? Tell me in one word, yes or not." You are placing me in the same position now.

Sir Abdul Halim Ghuznavi: My Honourable friend finds it difficult to answer. That ticketless travelling is an abuse, is wrong, is bad, is admitted by every Member of this House, except I think my Honourable friend, Mr. Nauman.

Mr. Muhammad Nauman: Probably you did not hear me then.

Sir Abdul Halim Ghuznavi: May I take it now that you agree that it is wrong,—is bad?

Mr. Muhammad Nauman: I have always said that it is a vice after all.

Sir Abdul Halim Ghuznavi: It is a vice?

Mr. Muhammad Nauman: Certainly.

Sir Abdul Halim Ghuznavi: That it should be remedied?

Mr. Muhammad Nauman: Yes, I have said that too.

Sir Abdul Halim Ghuznavi: That is a vice to be remedied. The remedy is by this Bill.

Mr. Muhammad Nauman: That is not the remedy, that is the trouble.

Sir Abdul Halim Ghuznavi: I would welcome any suggestions for improving this Bill on the floor of this House. Let the Bill be taken up for consideration. Then fight on every point, on every clause, wherever you feel that it should not be there. But what is the idea of sending it back to the Select Committee and not taking it into consideration? Dr. Sir Ziauddin Ahmad has pointed out half a dozen items and he says that these should be considered first before taking the ticketless travel Bill. What is the idea of all this? The Bill, as it has emerged from the Select Committee, is now before the House. Let us put our heads together and put through this House a Bill which will check this evil and at the same time will not be harsh or may not be abused. I must say that my Honourable friend, Dr. Banerjea, sounded the right note. He said he was in favour of this Bill but he wanted certain changes. Every one of us want certain changes to make the Bill better. This is an evil and you have to take measures to remedy this evil. Mr. Muhammad Nauman asked, "Excepting in India, is there any other country where you have a ticketless travel Bill? In the British Empire, in England, or the Colonies, or the Dominions"

An Honourable Member: or the civilised world.

Sir Abdul Halim Ghuznavi: or the civilised world. I do not know whether he has travelled beyond India, but if he had done so, he would have known that the system abroad is quite different from what it is here. It is not possible in other countries to travel without a ticket but it is possible here, and that is what I want the Government to remedy.

Mr. Muhammad Nauman: Why is it not possible in other countries? Will you tell me?

Sir Abdul Halim Ghuznavi: In other countries it is a corridor train, and there is one door, at which the guard stands and will not allow any man to go unless he can show a ticket.

Mr. Muhammad Nauman: I have seen people travelling without ticket in France and in Italy as well.

Sir Abdul Halim Ghuznavi: Have you been to France?

Mr. Muhammad Nauman: Yes, I have.

Mr. M. S. Aney: Ask him, how did he know that they travelled without tickets? That is a very important question.

Sir Abdul Halim Ghuznavi: Now, Sir, the position is this. Every station in those countries is fenced. If you fence the stations, make it impossible for the passengers to come in—you have your ticket office outside and if you fence all your stations in such a way that they cannot go inside the station without buying a ticket

Mr. Muhammad Nauman: In London you can say that.

Sir Abdul Halim Ghuznavi: The railways here should have done that long ago. Prevent people travelling without a ticket. Then there is another thing. The number of third class ticket-sellers is very limited. In a rush it is difficult to get a third class ticket. They should introduce the system which is available in England—that is the penny in the slot. At various stations, they do not have a man to sell. The smaller sections have introduced that system as you have introduced the system of platform tickets here. That would relieve the rush.

Mr. Muhammad Azhar Ali: Why not suggest these things to the Honourable Member and have these things included?

Sir Abdul Halim Ghuznavi: What am I doing here?

Mr. Muhammad Azhar Ali: If they are not introduced, you should go with us in the same lobby.

Sir Abdul Halim Ghuznavi: Why?

Mr. Muhammad Azhar Ali: Your advice will not be adhered to.

Sir Abdul Halim Ghuznavi: I can only advise them. If after hearing the Honourable Member I am not satisfied, I will certainly go with you. However, Sir, I have very carefully read the Note of Dissent. There are two signatures. They are Dr. Sir Ziauddin's draft. The language has convinced me on that point. Now, Sir, you can take advantage of every one of those dissenting minutes on the floor of this House. Make us understand, so that we can agree with you but don't throw it out by

[Sir Abdul Halim Ghuznavi.]

sending it back to the Select Committee. I am opposed to it. I am for considering this Bill and improving it. This is a measure which has been hanging on for the last six years.

An Honourable Member: Oh!

Sir Abdul Halim Ghuznavi: Somebody says 'Oh'. The Central Advisory Council for Railways have been considering this. It was considering it at last meeting and we were unanimous.

Mr. Muhammad Nauman: We were not unanimous.

Sir Abdul Halim Ghuznavi: Perhaps barring you. Sir Andrew Clow will be able to say.

An Honourable Member: Are you talking of Central or Provincial Advisory Councils?

Sir Abdul Halim Ghuznavi: I am talking of the Central Advisory Council.

Qazi Muhammad Ahmad Kasmi (Meerut Division Muhammadan Rural): Sir, is the Honourable Member entitled to carry on a conversation with the Members.

Sir Abdul Halim Ghuznavi: I am addressing the Chair. They were unanimous, excepting my friend, Mr. Nauman, and it was only then that Sir Andrew Clow thought of bringing in this Bill before this Honourable House. I support the motion for consideration and oppose the recommittal of the Bill to the Select Committee.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, before I mention the three fundamental points on which we on this side differ from the gentleman who is piloting this Bill, I would like to tell a small story. It took place in a famous place called Bhogaon with which some of our friends may be familiar, and I do not know whether my Honourable friend, Sir Andrew Clow, had ever been an S. D. O. of this place. I am not ashamed of saying that I once represented that particular constituency in the local council. A person having some commonsense loses it while visiting Bhogaon. Even the Public Works Department when they put up milestones put nine furlongs to a mile there! Now, there are a number of stories about this place, and I shall confine myself to only one. There was a qazi residing in that place who was fairly well off. He had jewellery and cash, and it was his habit, like the people of Bhogaon, that he never kept valuables under lock and key, and the doors of his house were kept open day and night, so that anybody could enter at any time of the day or night and take away whatever wanted. People came to know that there were valuable things in the house and that nothing was kept under lock and key and the doors of the house were always open. Police came and took away some of the properties. Later on, beggars began to steal and were shared by the police themselves. As soon as the qazi found that people were taking advantage of this situation and taking away his property, he went to the magistrate and said: "My property is being stolen. You must promulgate an ordinance

or a law that if any one comes to my house and takes away the property, his hands should be cut off, if not murdered altogether". The magistrate said: "Why on earth you do not keep your things under lock and key. This is the first step that you ought to take. If you keep your things under lock and key, then I will see that thieves do not enter your house and then probably the action which you suggest may not arise". There was a great quarrel between the *qazi* and the magistrate over this issue. The *qazi* said: "You want to encourage theft in this place. What kind of magistrate are you? Tell me in one word whether you want to encourage theft or not". That is the quarrel that arose on this particular issue and the *qazi* was always threatening the magistrate that he was not carrying on his duty and he ought to pass stringent orders condemning this burglary and theft. The magistrate said: "For goodness sake, before anything could be done, keep your doors shut and keep your property under lock and key. At the same time employ some reliable watchmen who will protect your house. Even thefts occur, even after you have taken these precautions then I will be very pleased to help you". This was the reply given by the magistrate.

I now come to the points at issue and I shall mention this that there are three fundamental points of difference between ourselves and the representatives on the other side. Now, the first point is that when this question was discussed by the Central Advisory Council for Railways in 1923 they gave clear instructions that you should keep your house in order. First, take all those precautionary measures which are necessary to make this travel without ticket impossible. Now, this was the point raised by my friend, Sir Abdul Halim Ghuznavi, and this is the point which I will now discuss and this is the point which I pressed on the Select Committee, that we should have the opportunity to discuss this question with the representatives of the Railways. I had my definite suggestions to make but this permission was refused and I think it is quite unfair on the part of the Railway Administration to refuse to consult upon this particular question with the Railways so that we might be able to suggest better methods by means of which they could have themselves ten times as much money as they are losing now, and now they come forward with this drastic punishment before this House. When we pressed them in 1923 to take precautionary measures against this, why did not they do so? What action was taken against that sort of thing? Now, the thing has gone from bad to worse but they never improved their system during the last twenty years so that they have not carried out the instructions given to them by the Central Advisory Council in 1923 and they have gone on with their idleness and laziness and now like the *Qazi* of Bhogaon they want to punish these thieves by cutting off their hands. We have been telling them, "Please keep your house in order; for goodness sake, keep your safes and boxes under lock and key, and when you find that even then you cannot stop burglary, then we will certainly help you and make every effort to stop the burglary, but we say it is unfair for the *Qazi* of Bhogaon to ask to have this legislative measure while at the same time they take no steps whatever to keep their house in order. Sir, this is the first point of difference between us. I may say in passing that my friend, Sir Muhammad Yamin Khan, is the representative of Bhogaon but he said I think he never visited it.

Sir Muhammad Yamin Khan: Yes, that is in my constituency.

Dr. Sir Ziauddin Ahmad: Sir, the first point of difference between us is this, that we insist that the house should be put in order, and we are quite prepared to assist in every possible manner, by advice and discussion, the Railway Administration so that their system may improve and I could suggest how the improvement could be made but since this thing was denied to us, I have no alternative but to discuss it at very great length—never mind, time is no consideration; since this thing was refused on the Select Committee, I will have to say all that I could have said there, here, now, on the floor of the House. The second point of difference between them and ourselves was this. Now, the first point was, "put your own house in order". You have no right to bring forward a drastic measure like this when you do not keep all your boxes under lock and key and keep them open for inspection by everybody at night. The second point of difference is—as was pointed out by my friend, Mr. Nauman—this, that it is not a question of our supporting ticketless travel or not; in no country—I put this question on the floor of the House last time—is ticketless travel an offence calling for punishment. I was given some reply and the names of certain countries were mentioned, but those countries were like Timbuctoo and very small countries not worth mentioning, but I say that no civilized country has done this. May I ask my Honourable friend, Sir Andrew Clow, himself to say whether this travelling without ticket is a cognizable offence so that a person could be sent to jail in England. If it is not, then—

Har che bar khud na pasandi ba digran mapasand.

Why are you pressing for others what you don't like for yourself?

If you have not legislated in your own country, which is a highly civilized country, for this particular crime, why are you trying to thrust this thing upon us now? They have adopted precautionary methods by means of which such ticketless travel could be avoided: why not follow the same methods in this country and why, like the *Qazi* of Bhogaon, insist that you would not adopt all these methods but would really introduce a novel method.

The Honourable Diwan Bahadur Sir A Ramaswami Mudaliar (Member for Commerce and Labour) : What is that method?

Dr. Sir Ziauddin Ahmad: Sir, since this is not a cognizable offence in any civilized country, why are you creating a special offence in this country and then, afterwards, put the blame on the standard of morality of Indians and say that that standard is not very high? You keep all these valuable open to everybody without lock and key and if they are stolen, you say our morality is not high. Why are you going to test morality in this particular manner when it has not been tested in any other country?

Sir, the third point of difference between ourselves and them is that they have not taken sufficient precautions to see that the provisions of this Bill will not be abused. We, on this side, have very serious misgivings on this particular point and we want really to see that sufficient precautions ought to be taken so that this thing may not be misused. Now, we know very well what these railway magistrates are. At least we, on this side, know that they are being bribed by being given passes. There is absolutely no justification for this and in order to get passes and in order to travel first class they are in effect bribed. Even honorary magistrates get such passes. So that what I want is that we ought to take precautionary

measures before we can agree to any drastic measure such as that now suggested in the Bill. These are the three points of fundamental difference between us and the people who are piloting this Bill. Now I take the first question which I wish I could have discussed elsewhere and thus saved the time of the Assembly, but since we were denied the opportunity by the definite voting of the Honourable Member himself, and this was a particular privilege, and so much so that even through his influence one Member changed his mind, but, however, I am not going to refer to what happened in the Select Committee.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: But such influencing is legitimate.

Dr. Sir Ziauddin Ahmad: Well, nobody calls it "illegitimate". I think here we are not discussing whether any person is legitimate or illegitimate. Some point were raised by my friend, Sir Abdul Halim Ghuznavi, when he said that it is impossible in Europe to travel without ticket, and I ask, if it can be made impossible in Europe, then why not in this country? No precautionary measures are adopted here, in spite of the fact that these were suggested so many times.

Now, Sir, I shall take the precautionary measures one by one. The first question, as everybody knows, is this, that the best check is the provision of corridor trains. I think this is an important point. We know this thing was suggested by Mr. Robertson as early as 1901 and he pointed out about forty years ago to the Railway Administration that your breadth of the carriages is too short for the gauge,—your gauge is 5'6" and for this you want the breadth of 12 ft. 3 inches carriages, while at present our carriages have got an allowance of 22½ per cent. They could have been increased by 2 ft. and 9 inches and afforded greater efficiency. We could have kept the present gauge as it is and we could have kept the same machinery but we could have put a body which was 2 feet and 9 inches wider than it is at present. Now, this fact was pointed out to the Railway Administration by Mr. Robertson in 1901 and it involved no additional expense whatsoever. Your breadth will be the same, your axle will be the same, only the upper part will have to be altered and the breadth could be increased by 2 feet and 9 inches. If this thing could be done without any prohibitive expense, then why not increase the width of the carriages by 2 feet and 9 inches and provide the corridor in this width. In this way the accommodation will not diminish and this corridor will have the additional advantage that whenever there is a rush of passengers on the occasion of *Melas*, then you can take a large number of passengers. I see no reason why the Government should not have accepted this advice which was given to them 40 years ago and which could have been acted upon. I should like to know why 40 years have been allowed to pass especially when they had years of boon and when they had plenty of money. But they never took this advice into their consideration with the result that we have got no corridor carriages except a few carriages which run between Bombay and Poona. There is no question of ticketless travellers there. So, the first thing for which the *Qazi* of Bhogaon is responsible is that we have not got the corridor trains in spite of the fact that this thing was pointed out in 1901 and it was pressed in 1923 by the Central Advisory Council for Railways. Now, I think, it is time that they ought to provide the corridor trains. This should:

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be done at least on Branch lines to begin with, because there is the maximum amount of ticketless travelling there. I would have very much liked to discuss with the representatives of the Railways the practical difficulties in this matter. Why should they not have these corridor trains, at least in the new carriages. They have got a big budget for the carriages this year. And they can easily get corridors in the carriages which go to the workshops for repairs. And it is not also very expensive. It may not materially alter ticketless travelling but it will be a great help in checking tickets. The Railway Administrations say that there are practical difficulties in having corridors but I would like to discuss those difficulties with them so that we may sympathise with them. But why is this privilege of discussion denied to us? Why does the Honourable Member refuse us the privilege of this discussion with the Railway Administration? That is the attitude of the Qazi of Bhogaon and I do not understand it. We should have an opportunity of discussion on this matter. Whether we pass this Bill or not and whether we provide any punishment or not, the problem of having corridor trains stands by itself and it is quite independent of this Bill. Even if punishment is provided, it will be of no avail because ticketless travelling would be avoided altogether.

Kunwar Hajee Ismael Ali Khan (Nominated Non-Official): How can the corridor system stop ticketless travel?

Dr. Sir Ziauddin Ahmad: If there are corridor trains, you will find that after every stoppage there will be a ticket collector or a guard or somebody else to examine the tickets of all the passengers.

Mr. M. S. Aney: Ticketless passengers have been detected and that is the reason why they say there were ticketless passengers.

Dr. Sir Ziauddin Ahmad: Fifty per cent. detection is quite different from cent per cent detection.

Now, the second suggestion that I have always made is this that your system of checking the tickets should improve. In the old days there was a very good system on the Company-managed Railways and in those days, probably, we did not hear much about the ticketless travel. They had a very good staff at Junction stations where all the tickets used to be examined. Later on, they had a very responsible man whose salary was from Rs. 200 to Rs. 450 and who was a man belonging to a good family and who had good education. He was not under the Traffic but served under the Accounts. He was the travelling ticket examiner and he was under the obligation of nobody. He was absolutely independent and could not be touched by anybody except the Chief Accounts Officer. He used to check the tickets of everybody. The mere fact that he was there stopped a good deal of ticketless travel. By this system the travelling without ticket was to a very great extent minimised. I do not say that it was stopped altogether because, later on, I will come to this point when I divide the different classes of people who travel without tickets. Later on, some of the railway officers got a novel idea and introduced what is called the crew system. Now, this system was very enthusiastically tried on the North Western Railway but it failed. The same officer who is

responsible for so many mistakes in the Railway administration, whose name I will not mention, is also responsible for the extravagant expenditure on this crew system which runs to crores of rupees. He suggested that this system should be tried again on different lines. It was tried in Calcutta and there too it hopelessly failed. What actually happened there was that this army of ticket collectors took the whole of a *Barat* without tickets from one station to another and they divided the money amongst themselves. Then, they appointed a Committee consisting of Moody and Ward and they wrote out a report. The way in which this report was carried out by the railway people is a thing which can only happen on Indian railways. It cannot happen in any other Department of the Government of India nor could it happen anywhere in the world. They suggested a new system and all those persons who were engaged on ticket collecting and so on were to be dismissed. Since it was a new system, everyone was to be appointed afresh and they were appointed on the grades of Rs. 30, Rs. 40 and so on with the result that persons who were drawing Rs. 800 and upwards were reduced to this small pay. I fought with Government on that problem for seven years. Afterwards they modified some of their orders but the trouble is still there. The travelling ticket collectors were specified as stationary officers, as persons who were not travelling. The result was that they were not given any travelling allowance and were given a consolidated allowance of Rs. 15 or Rs. 20 a month. They have got their grievances and so long as your servants are not satisfied, naturally you cannot expect from them good and efficient work. Then, there came a change in the salaries. Now, those people who joined in 1926 expected that they will be put in the old scales of pay; instead of that they are now being put in the new scales of pay which begins from 1931 and onwards. They were all given the new grade. There is a standing dis-satisfaction among this class of people who are supposed to administer this particular law and unless you make this class a contented and satisfied lot and unless you make this class self-respecting and honoured, jealous of the reputation of the railway administration, it is impossible to put this law into their hands and expect a better state of affairs. You cannot expect a dis-satisfied lot of people to run an administration efficiently.

The next point that I wish to suggest is that you should thoroughly revise your system of checking. Unless a proper procedure is devised, no kind of punishment will alter the present evil. If a ticket checker gets eight annas when the punishment for ticketless travel is only a fine, then if you increase the punishment to imprisonment, then the ticket checker will raise his demand to twelve annas. Formerly he was satisfied with eight annas and now with the new Bill in force he will increase his demand. In this way you are only increasing corruption. In this connection I should also like to point out another evil which is prevalent. The Administrative officers of the Railways also know this. Supposing a person buys a return ticket at Calcutta to Delhi and back. He comes to Delhi and then returns to Calcutta and hands over the return half of the ticket at Calcutta. These return halves are collected together at Calcutta and before the time expires for using these tickets again, they are sent to Delhi and through some private agencies, these tickets are resold and some other persons travel again on those tickets. In this way the Railway Administration loses a lot of revenue. The Department knows this practice very well and yet they would not take any steps to remedy this evil. I discussed this question with one of the General Managers in

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Calcutta and I suggested to him that the best way to save the railways from loss is to adopt a different system of return tickets. Instead of return tickets, let the gentleman be given return coupons which he can exchange for tickets at the booking officer when he proceeds to travel. In this way the return half cannot be used again several times. The time limit for these return coupons which have to be exchanged for tickets will be the same.

Mr. N. M. Joshi: But what about the inconvenience and trouble to passengers?

Dr. Sir Ziauddin Ahmad: One of the General Managers told me that by having this system the railway administration will gain at least Rs. 4,000 a day. I think this is a better way of increasing the income of Railways which all of us want to have. What is the use of sending people to jail which I know will never work and which I will discuss later on.

The next point I wish to refer is this. Since the time they put the ticket checking staff under the operation section and took it away from the Accounts, it has become exceedingly difficult for the ticket collectors to check tickets of Railway servants who travel without tickets.

The ticket collectors are sure that if they report against their brother railway servants, they will be discharged and on that ground cases of railway servants who travel without tickets are not brought to light. I should like to discuss this point also with the Railway Administration to see whether this is not a fact. It is not easy for me to refer to every point in the course of the discussion on the floor of the House, but I should like to talk across the table and discuss this particular question. I know of an instance where a high railway official was travelling with his family in a saloon and somebody wired from one station to the ticket checker at the next station saying that such and such a railway official is travelling in his saloon with his family and that he should be checked. At the next station when the Ticket collector went to the saloon and showed this telegram to the Railway official, he took over the telegram and wrote on it: "I have personally examined the saloon, there is no person without a ticket" and signed his name. This is what took place. How can you expect the poor ticket collector to do his duty. If he is courageous enough to report against his superior officer, he does so at the risk of being removed from service. Therefore, if you really want that ticketless travelling should be put an end to, high railway officials should set the example themselves so that others might follow.

In my opinion the following steps should be taken to make the railway servants more efficient and honest. Whatever rules you might make, the poorly paid railway servants have got to go to the markets at way side stations for purchasing their household needs and they will surely travel without tickets. Some of these people must necessarily travel. I, therefore, suggest that the Railway Board should restore to these poorly paid railway servants the passes and conditions which existed in 1933. This will make them satisfied and contented. That is a reasonable step

forward. I put this particular question to a railway official who was here for a short time and he agreed with me, but when I put the question on the floor of the House and requested him to restore passes to 1933 condition, then something happened behind the scenes and later on he said: "I am sorry I cannot agree on this particular question". If you really want that the railway people should not travel without tickets, you must give them all facilities. There facilities everybody appreciates. You must give all reasonable facilities which the company administrations have devised and which have been in practice for a considerable time and which continued till 1933. If you restore the conditions of passes to 1933 level, the railway servants will be satisfied and they will have no ground for travelling without tickets.

Mr. M. S. Aney: How do you improve the Bill by these suggestions? Let us know the amendments which you want to make to this Bill by which you can bring about the results you want. To my mind the whole question that is being discussed is entirely not germane to the Bill which is before the House.

Dr. Sir Ziauddin Ahmad: If I understand the Bill aright, it is really to stop ticketless travelling. This is the gist of the whole Bill.

Mr. M. S. Aney: Then oppose the Bill on that ground. Your suggestions have got nothing to do with the Bill.

Dr. Sir Ziauddin Ahmad: I oppose everything. I am referring to one class of ticketless travellers and I am giving suggestions as to how you can remove this practice of ticketless travelling amongst this class of people. The best remedy to stop this evil of ticketless travelling among the railway servants is to give them all facilities for travel by restoring the passes which were taken away from them in 1933. The other way in which you can check this evil of ticketless travel is to have as ticket-examiners persons on high salaries and who will be above temptation. They should not work under the Transport Department, but they should be put under the Accounts Department. I have got a good deal of experience of accounts and I know that nobody can challenge the integrity and independence of the Accounts Department. That is a great point in favour of the Accounts Department. The Accounts people might be sometimes extravagant and sometimes they may be very obstructive, but at the same time nobody can deny that they are persons whose integrity cannot be questioned. This is a point in their favour and it is for this reason that I want the ticket checkers to be put under the control of the Accounts Department. Even now in some of the Company-managed railways, the ticket checkers are under the Accounts Department.

There is an additional difficulty now. They have left this system of checking to each division and every officer who comes as
 4 P.M. Superintendent of Traffic devises his own method of checking. So every six months the system changes; their headquarters are transferred from one station to another and the whole thing is made topsy-turvy. These constant changes and experiments should cease, and if you want to stop ticketless travelling you must meet these two suggestions, namely,

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restore the passes that existed in 1933, and introduce a better system of checking tickets. You should have the tickets thoroughly examined by the station staff at every junction station and one man from the accounts side on a good salary should travel in the train and check the tickets. We know it is a common practice to travel without tickets from Lahore to Delhi. A man enters a second class compartment at a small station and then comes to Delhi and gets out. This kind of thing can only be detected by your own railway staff if they are in a position to do their duty with satisfaction and cheerfulness, and a dis-satisfied staff will never do their work properly.

The next point is about the system. As my Honourable friend, Sir Abdul Halim Ghuznavi, knows, in Europe and other countries it is not possible for anyone to enter or leave a railway station without producing a ticket. Here the stations are so constructed that it is only the kindness of the passengers that makes them hand over their tickets. Otherwise the whole place is open any you can get down at any point you like. The stations were not constructed with an eye to the checking of tickets. The next difficulty is about the purchase of tickets. I said in this connection that at a number of stations there is one man at night to do the whole work. At night it so happens that for a time he sleeps and as soon as the train is about to leave the last station he gets up and gives the signal and sells tickets at the counter, and as soon as the train reaches the distant signal he stops selling tickets and goes to the gate to receive tickets from the passengers who get down. So this one man acts as signaller, ticket-seller, ticket-receiver, and everything else. Even at such a big station as Balharshah there is only one man at night who does all these things and everything else. So if you want that everybody should purchase a ticket you must provide the necessary facilities. Otherwise a man must travel when he has urgent work to do and he will take all risks and get into a train if he cannot purchase a ticket. So all facilities for the purchase of tickets must be provided so that ticketless travel may be minimised. So you must have corridor trains, better system of checking and purchase of tickets, and you will have less people travelling without tickets. The number will not be reduced by the penal clauses you have in mind but only by these methods. I may say that we are not in favour of encouraging ticketless travelling but at the same time we are of the view that punishment alone will not stop this thing altogether.

Next, I come to the class of people who travel without tickets and I should like to know what class the Honourable Member wants to rope in by means of this Bill. First, you have got beggars, *sadhus*, mendicants, and so on. I may inform the Honourable Member that there are regular beggars who travel from small stations to bigger stations for the collection of alms and a percentage is given to the ticket examiners to enable them to travel without tickets. If your own staff are like that you should first of all make them responsible men so that they may not do this kind of thing. I was told by some very responsible persons about this percentage of gains being given by these beggars to the train examiners for being allowed to travel without tickets. There is another class of beggars and *sadhus* who have no money and no home and go to visit some shrines or some disciples. If you stop them at some station they will simply take the next train; and if they are not allowed to do that they will walk five or six miles to

the next station and there take another train. If you send them to jail they will be all the happier because they will get good food and lodgings. I was told by a friend who has come back from Africa that when the Libyans were arrested and brought to Egypt and given proper meals they were very happy because they did not get food in Libya itself. In the same way if you put these mendicants and *sadhus* in jail they will be happy and thankful. I do not see any solution of this difficulty and railway people are afraid to catch hold of these people for fear of their curses. So whatever you may do these people will always travel without tickets.

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

That is one class and I do not think my Honourable friend wishes to rope in these people. Punishment of jail to these people is a pleasant thing and it will not by any means have a deterrent effect on them; and their number is put at about one and a half millions.

Another class is the railway servants: they think it is their railway and they are the masters and that it is exceedingly harsh to have to purchase a ticket. This measure will not deter them; and if any of them are sent to jail, they will have very great sympathy for them; and unless you improve the conditions of service on the lines I have suggested and unless you have a better system of checking tickets and unless you restore the passes of 1933, this class of people cannot be roped in by this measure.

I have mentioned the classes of people who cannot be roped in by this measure. What other classes have you in mind? There is a third class, I was told by one of the railway officials. These are the subordinate servants of tea planters and sugar mills and so on. They travel without tickets in upper classes and they draw better salaries than these ticket collectors. If a ticket collector drawing 20 or 25 rupees approaches these men and asks for their tickets they become very menacing and say "*Chale Jao*" or "*Hat Jao*" and if by any chance the ticket collector reports them to the higher authorities, then their own officers have great influence than these ticket collectors, and the ticket collector will probably be discharged or dismissed; and so they take jolly good care not to report against such persons.

The only others who travel without tickets are the honest men whom Professor Banerjea has described, who are not able to purchase tickets in time and so on. We can rope in only these people whenever we like because they pay any amount as penalty, because to them a fine of 100 rupees is better than imprisonment even for a day and it makes no difference to them whether they are sentenced to one day or one week or two months or one year—they would prefer to pay. A good many of this class do not travel without tickets with any dishonest intention; some of them may do it for want of money; and, of course, you can frighten this class of people.

As I say, a large number of people will walk off free, and I foresee a great danger. If you begin seriously to apply this Bill, some enthusiastic railway magistrate may take it upon himself to send to prison some responsible persons, especially if he has a personal grouse against any particular class of people, and give them differential punishment—imprisonment for

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some and fine in other cases—and then there will be a good deal of agitation. It is quite possible that some Congress people may be sent to jail and others merely fined and, as a result there will be more agitation; and during war time it is not desirable to have an agitation on such a trifling matter. The Railway Member will not be here but the Home Member will have to deal with the situation created by the action of a class of magistrates who have to carry out the provisions of this Bill. I foresee a great danger. There may be propaganda saying: "Do not travel by railways as there is danger of imprisonment" and so on; and at once under the Defence of India Rules such people will be prosecuted. This is a commercial department and you will have to invoke a Defence of India Rule to deal with a man carrying on propaganda of this sort.

Therefore, I say, that the matter is not urgent: it has been before us for a considerable time. This was before us in 1936. One very great mistake which I made at that time was in not agreeing with Mr. Satyamurti who wanted to reject the Bill altogether but I insisted that it should be circulated. It was circulated and opinions were received and they were not in favour of this particular Bill and, suddenly, the thing was dropped and I thought the whole thing was over. But, suddenly, I find that the Honourable the Railway Member in a speech before the Railway Conference announces that the Bill is ready and I was surprised, knowing that there was so much opposition before. But he knows that there is no opposition now and he can bring in any measure he likes, and have his own way. He did not give us an opportunity to discuss with the railway authorities the points which I have outlined in the earlier portion of my speech . . .

An Honourable Member: Are you finishing?

Another Honourable Member: Why are you in a hurry?

Dr. Sir Ziauddin Ahmad: With regard to clause 5 whereby you can remove a person from a carriage for travelling without a ticket. I wish the Honourable Member visualises what will happen to such a person if he is ejected at a small station. Will he be allowed to walk out and walk to the next station and take the train there? Or will he be detained there in custody? There is no question of payment, because if he can pay he will not be ejected. But what will happen if he is ejected at a small station? Will he be sent to some magistrate or handed over to a police officer? There are no magistrates or police officers at these small stations. It has, therefore, been suggested that this ejection should take place only at junction stations or places where there are responsible railway servants. My friend agreed in the case of women and children unaccompanied by males, only at night time. But the thing applies to everybody. Anybody who supports this Bill must tell me on the floor of the House what will happen to such people. Will their property be confiscated and will they be put under the custody of some person? Who will be that person? On this point the Bill is silent. It might be that for want of accommodation a person has changed into a higher class: he might be stopped from travelling, though he had a ticket for a longer journey in a lower class. We must, therefore, see these things very clearly. Probably some of these persons not having any money on their own persons may have rich relatives waiting at the other end of the journey to receive them; and if they are ejected,

what will happen to them? Nobody has ever thought of these things, but we hope before we agree that the Honourable Member in his reply will clearly tell us what will happen to these men under clause 5. Will they be allowed to walk out or remain in the custody of the station master? If so, will they be sent to a place where there is a police station and at whose expense? If they are to be sent at the expense of the railways, why not eject them at that place and why at a small station? This is a point on which they are absolutely silent, because nowhere do they say a word as to what would happen to such people who are evicted at certain out of the way small stations. We assure the Government from this side of the House that we have very great sympathy for the measure which is now before the House; we want to see that ticketless travelling is avoided. My friend, Sir Abdul Halim Ghuznavi, is not there. He put me this question several times, and I assure him that we entirely sympathise with the motives which have actuated the Government to bring forward this measure, but we maintain that effective measures can be adopted only by first putting your own house in order, and the increase in punishment which you are suggesting in this particular Bill will not serve your object; it will defeat the very purpose for which this Bill has been framed.

Sir, I do not wish to go into the details of these clauses. I shall do so when the clauses are taken up for consideration, but one thing is perfectly certain, and that is, like the *Qazi* of Mainpuri, you should first put your own house in order before you attempt to increase the punishment. Punishment of imprisonment will not stop ticketless travel; it will only tend to increase corruption.

Then, the second point of difference is this. If such legislation is not in force in England, why should it be enforced on us here. As I said:

“What you don't like for yourself, don't recommend to others.”

If you do not like this enactment for England, why do you thrust it down the throats of India? First induce your own Home Government to have such a measure, and then introduce it here. In that case we will accept it here without any division, but before you introduce it in your own country, do not enforce it here and put a sort of blackmail on the people of this country by showing that Indians are a class of people who need legislation of this character. People outside will not understand that there is a small class of people who resort to ticketless travel, but if you enforce this law, there will be a sort of stigma attached to the people of this country which is really not justified by facts.

Then with regard to the third measure, I want to see that this provision is not misused, and that there is no corruption, so that people who could afford to pay, get out, while those who cannot afford to pay are roped in. Such kind of thing ought to be avoided, and I see no provision in the Bill by which you could avoid corruption. Then we suggested that there should be some qualifications as regards the Magistrates who will be sending this class of people to jail. I would only like that stipendiary or Honorary Magistrates of the first class should have this power. I do not think that second class Magistrates are fit enough for this purpose, because you should have first class people to administer this law.

Then, Sir, the prosecution will be undertaken on the report of a single man, whose salary is small, and without any question the poor man who is hauled up will be sent to jail. It is wrong that without a judicial inquiry merely on the report of a single low paid person, without any

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evidence, a person should be sent to jail. At small stations there are only three officers available, the ticket collector, the Assistant Station Master and the Guard. The Guard is very busy, so that he will not be available. Obviously the people who will have to undertake this inquiry will be the ticket examiner and the Assistant Station Master, and their salaries invariably are very small, and such people would not mind in small matters to resort to corruption. It is, therefore, very desirable that you should first improve the administration before you enforce the provisions of this law, before you give enhanced powers to these people to administer this law. This is really one important difference of opinion between the Honourable Members on this side and those on the other side.

Some Honourable Members: Sir, the question may now be put.

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

"That the question be now put."

The Assembly divided:

AYES—43.

Abdul Hamid, Khan Bahadur Sir.
Abdul Hamid, Khan Sahib Shaikh.
Ahmad Nawaz Khan, Major Nawab Sir.

Bewoor, Sir Gurunath.
Bhagchand Soni, Rai Bahadur Seth.
Boyle, Mr. J. D.
Buss, Mr. L. C.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Chettiar, Dr. Rajah Sir S. R. M. Annamalai.

Clow, The Honourable Sir Andrew.
Daga, Seth Sunderlal.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.

Dumasia, Mr. N. M.
Frampton, Mr. H. J.
Ghuznavi, Sir Abdul Halim.
Griffiths, Mr. P. J.
Gwilt, Mr. E. E. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.

Abdul Ghani, Maulvi Muhammad.
Aney, Mr. M. S.
Azhar Ali, Mr. Muhammad.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.

Datta, Mr. Akil Chandra.
Deshmukh, Mr. Govind V.
Essak Sait, Mr. H. A. Sathar H.
Ghiasuddin, Mr. M.
Ghulam Bhik Nairang, Syed.
Habibur Rahman, Dr.
Lalchand Navalrai, Mr.

The motion was adopted.

Kamaluddin Ahmed, Shams-ul-Ulema.
Khrushalpal Singh, Raja Bahadur.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.

Mazharul Islam, Maulvi.
Miller, Mr. C. C.
Muazzam Sahib Bahadur, Mr. Muhammad.

Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukherji, Mr. Basanta Kumar.
Pillay, Mr. T. S. S.
Rahman, Lieut.-Colonel M. A.
Raikman, The Honourable Sir Jeremy.

Raper, Mr. J. H. F.
Rau Sir Raghavendra.
Scott, Mr. J. Ramsay.
Shahban, Khan Bahadur Mian Ghulam Kadir Muhammad.
Sivraj, Rao Sahib N.
Spence, Sir George.
Stair, Mr. B. M.
Thomas, Mr. J. H.
Tyson, Mr. J. D.

NOES—23.

Maitra, Pandit Lakshmi Kanta.
Mehr Shah, Nawab Sahibzada Sir Sayad Muhammad.

Muhammad Ahmad Kazmi, Qazi.
Murtuza Sahib Bahadur, Maulvi Syed.

Nauman, Mr. Muhammad.
Parma, Nand, Bhai.
Rafuddin Ahmad Siddique, Shaikh.
Umar Aly Shah, Mr.
Yamin Khan, Sir Muhammad.
Zafar Ali Khan, Maulana.
Ziauddin Ahmad, Dr. Sir.

The Honourable Sir Andrew Olow: Sir, we have had a very long debate and if some Honourable Members have been excluded from raising new points, I have no doubt that they will find some opportunities later. I do not propose to reply in detail to all the points raised because a good many Honourable Members were dealing with amendments which apparently they contemplated moving, amendments which relate to clauses which we are going to consider, and opportunities will arise for discussing these points then.

Let me say that I agree entirely with my Honourable friend, Mr. Maitra, when he said that legislation alone will not achieve the object in view. I have never been under any such delusion, nor do I claim that the administration is not capable of improvement in several directions. But I do not think that is a reason for failing to remedy the defects in the law. He seemed to think that any passenger who had been found out by a railway servant and who said, "I have not got a ticket, please allow me to travel in the train," should get permission to travel. If that was the law, we should soon find that ticket collectors were entirely unnecessary, because people would not apply to the ticket collectors at all. The ticket collectors are, in fact, the very people whom we expect to grant permission in the form of a ticket to travel in the train, and the other provisions, such as the proviso added to section 4, are intended to be exceptional and not for the normal case.

Then my Honourable friend referred to the percentage of ticketless travellers whom we had detected. He has pointed out that it was a very small percentage, but I was not very clear what deduction he drew from that. Apparently, the deduction was that we need not punish those whom we detect. The percentage of murders or at least detected murders is very much smaller, but I have not heard that used as an argument for failing to punish fairly severely those whom we do catch having committed that crime.

Then my Honourable friend, Mr. Azhar Ali, moved his amendment and referred to some sort of Damocles' sword which was hanging over every Member of this House. He said, "I may be rich today. Tomorrow I may be poor." by which I understood him to mean, "Today I am in a position to purchase a ticket, but tomorrow I may not be in that position and ought to travel free." Railways are not charitable organisations, although they exercise, I am afraid, as some Honourable Members have pointed out, a good deal of charity to beggars. I should like to see that element of charity diminish and I hope that this Bill will have some effect in that direction. Then he asked me to state why I wanted to make a civil liability into a criminal liability. The answer is that I do not, because it has been done already. The Act as it stands makes travel with intent to defraud an offence. I am only proposing that the punishment should be made more severe. I am not converting any civil liability into a criminal liability.

My Honourable friend, Mr. Lalchand Navalrai, was a little confused. I think, between the two provisions regarding travellers under section 113, and he said, "If you are going to let him off with a penalty when he gets a certificate of permission, why differentiate in the other case? What is the difference?" The difference in the other case is that he has already incurred the penalty, that he is not merely starting on his journey, he has travelled, and at a later stage, reported to a railway servant that he has been travelling without a ticket. I think if he will

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reflect on the matter he will see that if we had had no penalty in such cases we should soon be in a completely impossible position, because anyone who is not a man of the strictest probity will only have to sit in the train for some time and then wait before he is detected and then rush up to the railway servant and say, "I have been travelling now. I am perfectly willing to pay my fare", whereas if he is not going to be detected, he may go on as long as he likes.

Pandit Lakshmi Kanta Maitra: What is the harm if the fare is realised then and there? Are you going to harass him even if he pays the legitimate fare?

The Honourable Sir Andrew Clow: We are not harassing; we are going to ask for the penalty because

Pandit Lakshmi Kanta Maitra: May I interrupt the Honourable Member for a minute? Supposing a man boards a train and he does not find any railway employee, and before he reaches the next station, he goes to the officer empowered to grant him the certificate, and says that he could not meet him at the last station when he boarded the train and that he has been travelling from the last station, what is the justification in that case for levying an excess fare if he has paid him the legitimate fare?

The Honourable Sir Andrew Clow: The penalty no doubt will be very small. We are not introducing a new penalty. It has been there ever since the Railways Act existed. I may have an opportunity to explain it later, but would say now that if there were no such penalty, we would be putting a serious temptation in the way of enormous numbers of men who otherwise would not fall into any such temptation at all.

But I think it was the arguments of Mr. Nauman that I found it most difficult to understand. In a flow of rhetoric before lunch,—I noticed he was distinctly quieter after lunch—he said, as I understood his argument, as follows: "The railways fall back on the general taxpayer whenever they lose and we have to foot the bill and the railways would not foot it, and why should they care either whether people travel without tickets?" It is a most astonishing argument from an Honourable Member of this House, when the railways are trying to diminish their losses and to prove a better bargain from the point of view of the general taxpayer and to relieve him from losses which they feel neither he nor they should sustain, surely that is an attitude which should commend itself to those who like my Honourable friend, Mr. Nauman, are solicitous for the taxpayer. He went on to say that I was in some mysterious manner condemning and maligning this country by providing penalties for ticketless travel. Surely there is no condemnation here. If so, we also condemn this country by providing penalties for murder and rape and other offences in the Penal Code and, surely, it cannot be argued from that

Mr. Muhammad Nauman: May I interrupt? I was saying that punishment for murder and other crimes is to be found in all parts of the world but a punishment of this nature for an act which has been made a cognisable offence does not exist in any part of the world and if it does, the Honourable Member can explain that.

The Honourable Sir Andrew Clow: Attempts to cheat are punished in all parts of the world. I have not the legislation in all parts of the world before me.

Mr. Muhammad Nauman: Tell us at least about England.

The Honourable Sir Andrew Clow: So far as I can recollect, I remember to have seen dire warnings on the walls of railway stations as to what would happen to passengers if they attempted to defraud the railway, which deter them from doing anything of the kind. I have provisions here in places nearer than England—a summary of them. I am told that in Ceylon travelling without a ticket is *ipso facto* an offence. I understand, for example, that in the Federated Malay States, if a person is found travelling without a ticket he may be taken to the nearest police station, if the fare is not paid. I have here the provisions in several places neighbouring India and I find that they are a good deal more attractive than the provision we have in the Bill here but I don't think I would get much support if I were to put them forward before this House.

Then coming to the remarks of Prof. Banerjea. I was not sure whether he was referring to sheep-lifting or shop-lifting

Dr. P. N. Banerjea: I said 'shop-lifting'.

The Honourable Sir Andrew Clow: He said it was formerly punishable with death, with the result that the courts would not convict and he apprehended a similar result here. He said that the magistrate himself will feel such pity for the offender that he will acquit him. But, surely, there is no analogy between the two cases. The punishment for sheep stealing was death but that was the minimum punishment. The punishment that is proposed to be imposed here is the maximum and if the magistrate feels pity, as he may do in many cases, it is open to him to impose a small fine.

Dr. P. N. Banerjea: I also said that the witnesses will not give evidence.

Mr. Umar Ali Shah (North Madras: Muhammadan): What is the difference between Rowlatt Act and this Railway Bill?

The Honourable Sir Andrew Clow: There is a very big difference. I see no similarity.

There was one constructive suggestion in the course of the debate and that was made by Sir Abdul Halim Ghuznavi regarding the introduction of slot machines. Well, if he will go to the Delhi station, he will find a slot machine there for platform tickets but we have got to keep a man there looking after these slot machines. They are only possible for tickets of very small denominations. They are not used in England for the ordinary tickets but are only used on the underground and places where you have very small denominations. As a solution to the problem of ticketless travel, this would not help us very much.

Sir Ziauddin Ahmad made a long series of complaints that he was prevented, I was not sure by whom, from discussing certain matters with the Railway Agents. Now, these were nearly all practical matters of administration, as Mr. Aney pointed out. They have nothing whatever to do

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with the Bill. If Honourable Members will refer to the Minute of Dissent which Sir Ziauddin Ahmad and Mr. Deshmukh have appended, they will find a list of six points. These are apparently points that they think might have been discussed in Committee but there is not one of them, which could be embodied by means of amendments to the Bill. They are all means for improving the administration in respect of ticketless travel—how we can stop re-selling of tickets and things of that kind. There is one reference, I think, to punishments—“what procedure should be adopted in the case of persons who have no money, for whom imprisonment will have no deterrent effect, that is, beggars and *sadhus*”. Well, now, I wonder what amendment he would suggest to deal with these gentlemen. I can only suppose he is thinking of some novel punishment in such cases, perhaps as the Mikado suggested, “something with boiling oil in it”. We are at all times ready to consider Sir Ziauddin’s suggestions for improvement of the administration but there is not one of those points that has any relevance to the legislation before the House.

Dr. Sir Ziauddin Ahmad: If you agree to my suggestion now or in future, then this Bill will be unnecessary.

The Honourable Sir Andrew Clow: Mr. Aney, I think, pointed out that Sir Ziauddin is really opposing the Bill. He says that the Bill is not required. That is a perfectly intelligible attitude, but, instead, he says that we should re-commit this Bill to the Select Committee for looking into these matters. I submit that is not the function of the Select Committee at all.

Mr. M. S. Aney: I am told that he raised these points because he was denied the opportunity of discussing them somewhere else.

The Honourable Sir Andrew Clow: I do not know if he was denied the opportunity but if he wishes to discuss these with the members of the Railway Board, they will be ready to have his advice. By sending the Bill to the Select Committee, the House endorsed its principle and the House would be stultifying itself by sending this back to the Select Committee, to discuss whether the Bill is necessary or not. If the same aim could be achieved by means of administrative measures, there would be no real object in doing so. I had not originally contemplated sending the Bill to the Select Committee but in response to appeals from the other side, I agreed to do so.

Maulana Zafar Ali Khan: Have you received a representation from the Madras Railway Users Federation in which they say that they do not like this Bill and that it ought to be thrown out.

The Honourable Sir Andrew Clow: Yes, and I have also had a representation from the Ticketless Passengers Association. They do not like the Bill either.

Dr. P. N. Banerjea: Where is the office of that Association located?

The Honourable Sir Andrew Clow: I will take the opportunity of reading their memorial to the House tomorrow. In the meantime, I would ask the House to take the Bill into consideration.

Mr. President (The Honourable Sir Abdur Rahim): The Chair will now put the amendment of Mr. Azhar Ali before the House. The question is:

"That the Bill be re-committed to a Select Committee consisting of Dr. Sir Ziauddin Ahmad, Sir Muhammad Yamin Khan, Mr. J. Ramsay Scott, Mr. Govind V. Deshmukh, Mr. N. M. Joshi, the Honourable Sir Andrew Clow, Mr. B. M. Staig, Khan Bahadur Mian Ghulam Kadir Muhammad Shahban, Khan Sahib Shaikh Abdul Hamid, and the Mover, with instructions to report on or before the 26th March, 1941, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was negatived.

The Chair will now put the substantive motion. The question is:

"That the Bill further to amend the Indian Railways Act, 1890, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The House will now proceed to deal with the Bill clause by clause. The question is:

"That clause 2 stand part of the Bill."

There is an amendment by Dr. Banerjea.

Dr. P. N. Banerjea: Sir, I move:

"That sub-clause (2) of clause 2 of the Bill be omitted."

Sir, this sub-clause did not exist in the original Bill but was inserted in the Select Committee. I am not acquainted with the proceedings of the Select Committee, but it seems to me that the claim put forward by the Honourable the Railway Member that the Select Committee improved the Bill does not appear to me to be quite justified. He said that certain safeguards had been provided by the Select Committee, but as the Select Committee has only introduced two amendments of which this is one, it appears to me that Sir Andrew Clow's claim that this was designed to give further protection to travellers is not valid. I think that he is quite wrong in holding this opinion. If this sub-clause did not exist, then a railway servant would be entitled to give a verbal permission, but this sub-clause has made the case for the traveller more stringent. Sir, in what circumstances is a person allowed to be on a railway justifiably? Well, if he is unable to purchase a ticket when the train is about to start either because there is a great rush before the ticket window or because he has arrived at the station very late. It is when there is no time to purchase a ticket that a passenger is justified in boarding the train without a ticket. If there is time to purchase a ticket, he is not justified. Now, if just a few seconds before the train starts, he wants to board the train, he has no time to get a certificate from the person who is authorised. In the first place, as the passenger will not know who the person is who has been authorised to issue the certificate, and then, secondly, it will not be possible for him, within the limited time at his disposal, to approach that person. Even if he is able to approach him, it will be extremely difficult for that authorised

[Dr. P. N. Banerjee.]

person to issue a certificate. The issue of the certificate will take at least two minutes and by that time the train will have started. Therefore, this authorised officer of the Railway Administration will refuse to issue a certificate. He will say, "there is no time; I say, you cannot board this train". Therefore it is clear, if the clause is allowed to stand as it is, that it will be a great hardship on the innocent traveller who does not wish to defraud the Railway. Then there is another point. The words used here are, "a railway servant, when granting the permission referred to in sub-section (1), may, if empowered in this behalf, grant to the passenger a certificate." The word is, "may". This is permissible. He will say, "I am authorised to do it but I will use my discretion and I won't allow this." What then? How is this to be regarded as an improvement? The Honourable Sir Andrew Clow claims that it is a further protection to the traveller. I do not see how it is. If he wishes really to give protection to the honest traveller, then he should word this sub-clause differently. In the first place, he should use the word "shall" for the word "may" and in the second place he should say that if the traveller intimates to the railway servant that it has not been possible for him to purchase a ticket, but that at the earliest opportunity he would purchase a ticket, then he should be allowed to travel. Unless the wording of this sub-clause is changed, I think it would act as a great hardship on the honest traveller and I hope the Honourable Sir Andrew Clow will consider this aspect of the question.

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

"That sub-clause (2) of clause 2 of the Bill be omitted."

Sir Muhammad Yamin Khan: Sir, there is really a great defect which I wanted to point out in this clause that, supposing I am coming from Simla or somewhere else to Delhi, and I have got a return ticket up to Delhi and I want to go to Meerut, and my train comes just in time so that I may hurriedly go and catch the other connecting train; and I have got no time to purchase a ticket by going outside to the booking office, and I want to board the train, as otherwise I may be detained for two or three hours for the next train, and in this hurry I want to catch the other train which may take me to my place, then what happens? Of course, there are other provisions in the Bill which may catch me under which I may be liable to be sentenced to one year's rigorous imprisonment or something like this, but, to avoid this, there is only one thing, *vis.*, that this clause has come in: will this clause be effective? Supposing there are only two minutes. Am I to search for the man who is to grant the certificate on the platform as to who is the person authorised to give me a certificate so that I can travel with that certificate or should it suffice for me to inform a railway official on the platform who should come to me at the next station or at the next junction and not cause worry at a time when I have got only sufficient time to board the train? That is the kind of difficulty in the way of the *bona fide* passengers, and of course that has been fully explained by Dr. Banerjee and I do not want to repeat the same arguments. But I would like to know how this thing, that is, if he may not grant this certificate, will affect and how does it help the *bona fide* traveller in a particular case such as I have mentioned, because this sort of thing will really happen and which has really happened when a *bona fide* traveller gets in without

a ticket. Sometimes he will not be able to purchase a ticket at the booking office because I have had myself some experience very recently, not even a month ago when on one of the lines where return tickets had been recently introduced, I wanted to purchase a return ticket and the booking clerk did not quite know whether a return ticket had been allowed or not and it took me twenty-five minutes to get the ticket from him and this man did not know how to issue the ticket, how much to charge from me and for all these things another booking clerk had to come for his help and rescue and then I got it. All this time the other passengers were waiting and they could not get their tickets. There were hardly two minutes left in the arrival of the train before I got my ticket and by the time I had finished I had sufficient time to go and get into the compartment and I do not know what happened to the other passengers. So with regard to this clause, what would those poor people have done because there was no other train on that line for nearly three or four hours again? So in these cases, if you put in something like this that a kind of certificate may be given, on any other station that will not cause unnecessary hardship to the *bona fide* travellers, because, if the man is unable to produce this certificate, he has to pay one-sixth excess fare under clause 4

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

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 19th February, 1941.