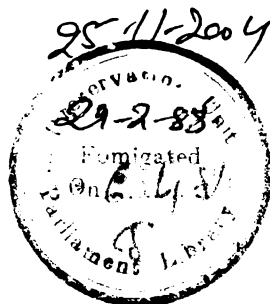


THE
COUNCIL OF STATE DEBATES

Volume V

(20th January to 26th March 1925)

FIFTH SESSION
OF THE
COUNCIL OF STATE, 1925



DELHI
GOVERNMENT OF INDIA PRESS
1925

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COUNCIL OF STATE.

Monday, 23rd February, 1925.

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

QUESTIONS AND ANSWERS.

EXAMINATION BY TWO JUDGES OF THE CASES OF PERSONS DETAINED UNDER THE BENGAL ORDINANCE.

97. THE HONOURABLE CHOWDHRY MUHAMMAD ISMAIL KHAN:

(a) Is it a fact that the cases of the persons arrested under Ordinance I of 1924 were placed before two judges for being examined?

(b) If so, will the Government be pleased to state whether any of these were Indian and to state also the ranks and the number of years' standing of those judges as such?

THE HONOURABLE MR. J. CRERAR: (a) Yes: I invite the Honourable Member's attention to the provisions of section 19 of the Ordinance.

(b) Government are not prepared to give this information.

REVISION OF PAY IN THE CURRENCY OFFICES.

98. THE HONOURABLE CHOWDHRY MUHAMMAD ISMAIL KHAN:

(a) Has the attention of Government been drawn to the letter published in the "Forward" dated the 28th January 1925, headed "Revision of pay in the Currency Offices"?

(b) Is it a fact that the recent revision of pay in the Currency Offices has adversely affected the senior clerks of those offices?

(c) If so, will the Government please state what action, if any, is proposed to be taken to redress their grievances?

THE HONOURABLE MR. A. C. McWATTERS: (a) Yes.

(b) No.

(c) Does not arise.

EXPORT OF WHEAT.

99. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Government please lay on the table a statement showing the acreage for wheat in British India for the last 5 years and also showing:

(a) the annual product of wheat for the same period;

(b) the quantity of wheat exported from British India during the same period;

(c) the prices obtaining in India during this period; and

(d) the export prices during this period?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: The information asked for in this and the two following questions is being collected and will be laid on the table in due course.

EXPORT OF RICE.

*100. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Government please lay on the table a statement giving similar figures for the same period in regard to rice?

CONTROL BY GOVERNMENT OF THE PRICE OF WHEAT FOR EXPORT.

*101. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: (a) Is it not a fact that there has been a considerable advance in the value of wheat exported from India during the last 12 months over the figures for the previous 12 months?

(b) If so, would the Government please state whether they propose to take any steps to control such advance?

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

THE SECRETARY OF THE COUNCIL: Sir, a Message has been received from the Legislative Assembly. The Message runs as follows:

"I am directed to inform you that the Bill to give effect to certain articles of the International Convention for the suppression of the circulation of, and traffic in, obscene publications, which was passed by the Council of State at their meeting of the 10th September, 1924, was passed by the Legislative Assembly at their meeting on the 20th February, 1925, with the amendments indicated in the attached statement.

The Legislative Assembly request the concurrence of the Council of State in the amendments."

The statement of amendments and a copy of the Bill as amended are laid on the table.

RESOLUTION *RE* MENTAL DEFECTIVES.

THE HONOURABLE MR. HAROON JAFFER (Bombay Presidency: Muhammadan): Sir, I beg to move the following Resolution:

"This Council recommends to the Governor General in Council that the Provincial Governments be asked to investigate the best means of dealing quickly and adequately with cases of mental defectives, particularly of the minor and curable kind."

Sir, in moving this Resolution, I feel that we are at last commencing an attack on what is perhaps one of the most insidious and demoralising enemies of our country, and an enemy, moreover, which has been permitted to have all its own way for many a long time now. There is no need for me to labour the fact, as an introduction to the subject, that scattered all over India at this very minute are thousands of mentally defective people, mostly uncertified and uncontrolled, who, doddering about the villages with no check on their unnatural passions, desires, and habits, constitute not only a very serious problem but also a very grave danger to the future of this country and its people. We know that certified lunatics who are a direct danger to themselves and to the public are in

* For answer to these, see reply given to Question No. 99.

many cases put under lock and key at the several mental hospitals in the different State centres, but these incarcerated lunatics are not a tithe, nay, not even a hundredth, of the number that are at large, working havoc on the social and moral life of the community. In European lands there is gradually growing the impression that, after all, the presence of a mentally-afflicted member is not such a degradation as was believed a generation ago; but in India this obstacle has yet to be overcome, although it exists in different forms, according to the various religious persuasions of the people concerned. But the fact that we are not so advanced in India as they are in other countries in this matter must not make us think that we are up against a problem which can never be solved and a series of obstacles which can never be surmounted, for as a matter of fact, we are now in no worse a position than the social reformers of England were barely two decades ago. And as we have their experience to work upon and to guide us away from pitfalls, we should enter upon this fight with free hearts, and with the greatest freedom from doubts.

In this Resolution I have purposely left out of reckoning the institutions which are existent at the present time to deal with the really bad cases of dangerous lunatics. What I want to get at is the root of the situation, namely, the thousands of unfortunates who were apparently harmless imbeciles and manifesting feeble-mindedness. These are, as medical science has so dramatically demonstrated recently, not nearly so harmless as they appear and as they have always been considered, neither is their mental condition so hopeless as it has been considered up to the present time. More than seventy-five per cent. of these mental defectives and ordinary imbeciles can be cured if they are treated and trained in the right manner, and if they are taken in time. Their malady is often the result of environment as well as of heredity, and can be remedied by a change of environment, and an antidotal treatment by skilled mental disease specialists. We are tackling the venereal problem in most countries in very much the same way, and having good success too; and if we in India are to keep in line with the progress of western and some eastern lands in this matter of health, then we must also make a move towards giving the unfortunate mental defective his dues. This is a matter for the State to deal with, assisted, of course, by private agencies; although it is so important a matter that I have no hesitation in asserting that the larger part of the responsibility must fall upon the Government, as to organising, guiding, financing and controlling. I am also of the opinion that the Government of India should lead in the matter and take the bigger burden instead of leaving it to the Provincial Governments, because the results of any neglect to deal with the matter are national rather than provincial.

Without going into this very important matter in too much detail, it might perhaps be fitting to refer briefly to the two most important results of failure to deal with the problem of the mentally defective, reminding you, of course, that I am still talking of those who are at large, being uncertified and uncontrolled. It has now been definitely established that crime has a physical basis, being caused by a physical defect of the brain which renders its victim so far below normal in emotion that he has little or no conscience, or makes him so far above normal in emotion as to make him hysterically irresponsible. By absolutely ignoring, therefore, the mentally defective people who are roaming the country at their own free will, we are automatically and virtually encouraging the increase of crime

[Mr. Haroon Jaffer.]

in the country, for, astounding as it may seem, nearly all crime can now be put down to a derangement of the brain. This statement will probably cause surprise, but it is the latest "discovery" of science, and has yet to be refuted. All the crime in the world is the work of less than two per cent. of the population, and as about fifty per cent. of the expenditure of Government in all countries is incurred to prevent and punish crime, it becomes evident that an attempt to solve this problem of the imbecile promises to be a paying proposition.

On the other hand, there is the heritage of moral and physical degradation, which is being transmitted from generation to generation among the defectives who are allowed to act as they like and to marry whom and as often as they like. At the present time there is no power to restrain them from any social activities. A feeble-minded man is often a source of danger to those with whom he comes in contact day after day; but the dangers which beset the feeble-minded girl are especially acute. The history of disease and mental and physical degeneracy which can be traced to its source in the life-history of one such woman is appalling, and from the point of view of social life and health this constitutes perhaps the strongest argument for a powerful authority to control this class of mental defective. Figures have been collected showing that families in which the mental defect is found, appear to be increasing far more rapidly than the normal, the ratio of children being 7 or 8 in the former to 3 or 4 in the latter. The abnormal families also exhibit histories of family drunkenness, epilepsy, consumption, insanity, and suicide in a far higher proportion than the normal families. The only cure for this evil, this uncontrolled mass of people feeble in will, in mind, and in morals,—is the establishment of an authority with power to certify for treatment all classes of feeble-minded persons. We have our clinics for venereal diseases in most large towns and there are plans on foot among different municipalities for the starting of more such clinics in the districts. It is clinics for treatment of partial and temporary insanity that we need as well, and I suggest that the Provincial Governments investigate this matter in order to meet the need and to solve this great problem.

I would point out just here that I would much prefer the problem to be tackled by the Government of India, but I have put my Resolution in the above form, recognising that the subject is really a transferred subject. If, however, the Government, which I am sure, are in sympathy with my efforts in this direction, can adopt the principle of my Resolution and undertake to go into the matter themselves and then issue instructions to the Provincial Governments to be passed on to the municipalities or other local bodies as decided, then that will fully satisfy me, provided that the plan retains the sole idea of something being done for the hordes of mentally defectives scattered all over the land. In this matter there is a very clear advantage in consolidating the administrations of public residential and treatment institutions under one body specially equipped for such a duty. for such procedure maintains both the personal interest of those responsible and the financial control of the Central Government. The Feeble Minded Act of July, 1913, passed by the House of Commons centralised the work of registering and caring for the defectives of England, and by its provisions ensured that all main classes of mental defective people were brought under one control. It also provided for the com-

pulsory segregation of certain classes who, since they could not be dealt with under the Lunacy and Idiots Acts, had not hitherto been dealt with. But even this did not bring all mental defectives under the operation of the Act, and now efforts are being made to establish clinics for the treatment of those who are curable and who could be made an asset instead of a burden to the nation.

Before closing, I would like to point out that a great deal could be done towards solving this problem by attacking it at its very source, namely, by beginning with the children. It has been well said that the childhood and schooling of defective children cannot rightly be treated apart from their after-life. No age, therefore, can be set for separating the school time from the period of supervision and after-treatment if needed, although in many cases proper treatment during the school period would completely cure the slightly deranged brain of its disease. But if during that period no cure is achieved, then they must be watched and treated until they are cured or can be properly cared for, and not set at liberty to roam about at will over the land and become a menace to the community. But perhaps I have said enough to show that this is an important subject.

A chain of clinics stretching around India would work miracles of social service in the matter under consideration, and I, therefore, trust that some scheme can be devised whereby we can undertake this stupendous but very necessary work.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, we are grateful to the Honourable Member for bringing up this question for the consideration of the House. It has important educational and medical aspects the responsibility for which, I would submit, Sir, still remains with the Government of India. The way that my Honourable friend has framed his Resolution will probably disarm the criticism that the Central Government cannot deal with it, as it relates largely at all events to what are termed transferred subjects. I submit there is still a large residuum of responsibility in the Central Government, and one consideration that I would like to submit, is the necessity for co-ordinating research in regard to how these cases should be dealt with. In the West there are systems which have worked well and taking them as a basis we have to see how far they can be applied and adapted to Indian conditions. We have the Montessori system and other systems that have come later: how to adapt them to India and make them really suitable to Indian conditions is a great problem which must engage the earnest attention of a number of medical and educational researchers for a long time to come. From that point of view, I submit, Sir, that the Government of India have a responsibility in the matter which they will not be slow in recognising.

Provincial Governments have also their responsibility and we frankly and gladly admit that those Governments are, so far as possible, doing what they can within the limited resources at their disposal—resources both in men as well as in money. Honourable Members may have noticed the Bengal Resolution on the subject of mental hospitals which has just been published and which shows that considerable good work is being done in that province. I have no doubt that other provinces also are doing similar work, but I do not think the question has yet been attacked from the points of view that my Honourable friend has brought forward in the course of his speech in support of this Resolution. There are important social and economic considerations on account of

[Sir Deva Prasād Sarvadhikary.]

which I think this problem has to be considered anew as early as possible in the latest scientific way specially made adaptable to Indian conditions. Honourable Members will remember that under the Hindu law a certain class of lunatics and imbeciles are precluded from taking their inheritance. Well, in cases where a cure has been effected complications have arisen—complications that the law courts have not always been able to deal with. Under modern treatment there has been an increase in the number of those who started in life not as congenital imbeciles or lunatics but curable lunatics and who have been able to take their place in society and put forward rights to get their inheritance. That is an important point of view—it is an all-India question—which is apt to be overlooked. The question, therefore, from various points of view has very great claims upon the State and the representatives of the people.

Sir, my Honourable friend has aptly drawn attention to the prevalence of crime due to some of the causes to which he has referred. Those who are acquainted with the writings of Lombroso and similar writers know how the removal of a particular cell or the replacement of certain features of the anatomy has converted rank lunatics into estimable members of society. There have been occasionally cases where a worthy man owing to some accident had come by some injury which terminated in his turning into a hopeless imbecile or criminal and a particular operation in time has cured him and restored him to his former worth and value in life. All these considerations would tend to show that it is not too early to take up the question in right earnest from points of view, some of which have been indicated by the Honourable Member. It is a well known saying—more schools and less jails. The same thing may be said of hospitals of the kind we have in view. The more schools and hospitals the less jails is the latest western pronouncement, and from that point of view the question is well worthy of attention.

In regard to what are known as political cases, at least in some cases, the early premonitions that had been disregarded in this direction have led to very disastrous results, and if these cases had been taken up in time, it would have been possible to save those young men from ruin and the natural sequences of untoward developments. Sir, thanks to the exertions of Lady Reading, a chain of Baby Week and baby developing organisations has sprung up in the country, and if the departments concerned were to apply their minds to this problem in connection with these organisations that are coming in, a great deal may be done if adequate resources are at the disposal of the authorities in taking up the baby imbecile question at the proper time.

Then, there is another consideration which also may engage the attention of our medical friends, whose vision is, I am glad to say, broadening. In the Ayurvedic and Hakimi systems are known methods of treatment which yield very beneficial results if the treatment is taken up in time. I know Government are doing a great deal for the encouragement of research in these matters, and from this point of view also a powerful auxiliary may be found in our Ayurvedic and Hakimi professors of medicine whose help may be requisitioned in time, and they may be powerful auxiliaries to our allopathic and homœopathic friends who may be called upon to take up questions of this kind.

My friend has referred to the problem of venereal diseases. It is well known that these, as well as diseases to which habitual drunkards are prone, are largely responsible for increase in the number of lunatics and imbecile people, and if Government have thought fit to take up one part of the problem the other part of the problem comes in the natural sequence of things. For all these considerations, Sir, and without labouring the matter in detail, I have great pleasure in supporting this Resolution.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces General): Sir, so far as the humanitarian objective of this Resolution is concerned, I do not think there could be two opinions, and we are all grateful to the Honourable Mover of this Resolution for having brought this question prominently before this House. On the merits of the Resolution too, it would be difficult to controvert any proposition which has been asserted to-day by the Honourable Mover. Agreeing so far, I feel I cannot endorse the remark which has fallen from my Honourable friend Dr. Sir Deva Prasad Sarvadhikary that the residue of the responsibility in this matter falls on the Central Government. Now-a-days there is a great deal of tendency—and that tendency has been prominently noticed—of usurping the powers of the Provincial Governments by stating that somehow or other, directly or indirectly, the Resolution in question has some incidental or remote connection with the Government of India. The country steadily has been fighting for provincial autonomy, to make Provincial Governments independent of the dictation of the Central Government, and I think so far as all matters falling strictly within the purview of Provincial Governments are concerned, it is the duty of this Council to watch, supervise and see that the power and authority of those Governments are in no way affected. The manner in which this Resolution has been drafted, perhaps, makes it in a way easier for Government to accept, as my Honourable friend Dr. Sir Deva Prasad Sarvadhikary has pointed out. But after all if the language is a little bit carefully examined, it is no more than a mandate from this Council that we have come to the conclusion that this subject must be undertaken and “You do it.” And what is the effect of that? The effect of that is that you deprive Provincial Governments and Members of Provincial Councils of their right of say in the matter. I think, Sir, from that point of view the Resolution as drafted is open to objection. Then, Sir, I quite realise that some sort of action should be taken in this matter and that Provincial Governments should wake up to their sense of responsibility. However, we are confronted with one serious fact that the matter is being now considered in England by a special conference which has been appointed for this purpose, and not only England but the entire world is awaiting the findings of that Commission. I do not know whether it would not be useful even for Provincial Governments or for any Government or even for the Central Government, if this Resolution is accepted, not to postpone the consideration of a matter of this kind till we are in possession of the findings of that Commission, which will be a sort of torchlight on this most difficult and important question. Everyone of us is in sympathy with the Resolution. There is no doubt about that. I know, and I quite realise, what my Honourable friend there has said about the disability of disinheritance attaching to lunacy, leprosy and such other diseases. It is a very very disheartening matter and that one feels that a man who has the legitimate right of inheritance should

[Sir Maneckji Dadabhoy.]

be deprived of his right by being afflicted with these diseases. Of course somebody would say "It is in the power of Hindus to modify their law." Probably, custom and convention and ancient usages would not permit of that being done, and there is much in it. But taking everything into consideration, it is a matter worth investigating. I have no doubt that the Government of India would show their deep sympathy with this matter, and I would suggest that, if the Government are not in a position to accept this Resolution in its entirety, they should send the proceedings of to-day's debate and distribute them among Provincial Governments with a sympathetic expression of opinion that they may consider the question from a broader and a more sympathetic point of view.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, it is quite clear that the House has listened to the arguments propounded by the Honourable Mover with the respect, the sympathy, and the attention which they undoubtedly deserve, and I am glad to be able to assure the Honourable gentleman and his friends that the Government of India regard the matter in precisely the same light. Anyone who has the slightest sense of responsibility for the well-being of the community will feel in regard to this question of the treatment of mental defectives that it is one of the greatest dangers that confronts the community and one which most urgently clamours for some remedy. The Honourable Mover very rightly pointed out that it was only at a comparatively recent date that even those Western States, which pride themselves on being in the forefront of civilisation, treated the serious questions of lunacy and mental deficiency in any enlightened and humane spirit. There were not lacking pioneers in philanthropy who, in their generation, devoted lives of self-sacrifice with very limited resources, both material and scientific, at their disposal and who did something to alleviate the hard lot of those afflicted in this manner. Nevertheless, it is hardly more than a century ago since Bedlam, one of the few national institutions in England—I will not say for the care but, at any rate, for the incarceration of lunatics—was one of the common tourists' sights in the city of London. And there were few people who in those days realised what a degrading and significant fact that was. Much progress has no doubt been made since then. My Honourable and learned friend from Nagpur has pointed out that even in England, though a great deal of progress has been made, the authorities are not satisfied that the question does not require a thorough investigation. Much advance is being made not only in the material and administrative remedies for dealing with this problem, but, as Honourable Members are aware, a very great advance has been made in scientific investigation. The science of psychiatry that had been in vogue could till recently, hardly claim to be a science at all. We are getting, at any rate, nearer to the scientific basis which must be the basis of any effective practical remedy. In India we certainly cannot claim even that degree of progress which is to be noticed in England, in America and in other Western States, and it certainly behoves us to give this question our most serious consideration. The afflictions which fall upon persons who suffer from mental disorder are of such a tragic character, that even if we should approach the question merely from the point of view of humanity, we could not deny its imperious claims on our sympathy. But, serious as this is, it is perhaps not the most serious aspect of the question. It has become more and more

realised as statistics of mental deficiency have become more reliable and accurate how very grave a menace this constitutes to the well-being of the community as a whole. Those who have studied the question—I regret I cannot claim to have studied it more profoundly than is to be expected from anyone who has any sense of civic duty—those who have studied the question are familiar with one very crucial case. There was a family of defectives in the United States of America, I think the name was Jukes, who some 20 or 30 years ago attracted the attention of persons at that time interested in this problem in the United States of America. Very elaborate statistics and very careful observations were made of the development, mental and otherwise, of that family, of their criminal propensities, and of the extent to which these were reproduced in subsequent generations. That well-known case may be regarded, I hope, as an extreme case. Nevertheless, the same causes must necessarily be in operation in every part of the world. They must necessarily be in operation in India. I am not therefore, disposed nor, I can assure the Honourable Member, are the Government of India disposed, to take any but a very serious and sympathetic view of this question. I could have wished that the Honourable Member, after the care and attention which he has devoted to his Resolution, might possibly have been in a position to give the House, what I regret I am not myself in a position to give them, some accurate, reliable and practical data relating to the problem. I should also have welcomed from the Honourable Member anything that he could have given us in the way of practical and constructive suggestions. The technical aspect of the case I shall leave to the very competent hands of the Honourable Major-General Sir Charles MacWatt, and I shall only touch, in the few remarks I have yet to make, upon its broader aspects. The Honourable Member has indicated that there has been a very large increase in cases of mental deficiency in India. Well, my own information does not entirely confirm that statement. At any rate, the case on that point has not as yet been clearly made out. It must be remembered that the census statistics relating to the question of mental deficiency are naturally neither complete nor reliable. It is perfectly obvious that, without attributing anything in the nature of dishonesty or deliberate deceit to those responsible for making these returns, but remembering how painful a matter it is, when you are giving the census returns relating to your family to give details of this nature, our statistics on this matter cannot be complete and trustworthy. That, however, does not make the problem less serious. It is a problem which must be attacked and must be attacked seriously. The question then arises as to what authority ought to have the immediate charge of the measures to be taken. I need hardly add anything on that point to what has fallen from my Honourable friend Sir Maneckji Dadabhoy. The constitutional situation is perfectly clear. All matters relating to lunacy and mental deficiency are matters which have been deliberately committed to the charge of the Local Governments, and by Devolution Rule 49 the Governor General in Council is precluded from exercising those powers of superintendence, direction and control which he may exercise in central subjects.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Medical research is still a Central subject.

THE HONOURABLE MR. J. CRERAR: But I do not urge that as any reason why the Government of India should wash their hands of this matter. Any matter which is of national importance and of national dimensions must

[Mr. J. Crerar.]

necessarily be a close concern of the Government of India. But I should be reluctant to commit myself to any proposition which would imply a reflection upon the Local Governments in this matter, or any disparagement of the efforts which they have made in the past and the measures they are taking now to deal with the situation. I must endorse the appeal made by the Honourable Sir Maneckji Dadabhoy on that point. It is no doubt the duty of the Indian Legislature to exercise vigilance in these matters; but we should certainly be departing from our duties; we should certainly be exceeding our province if we did anything likely to impair the initiative or the responsibility of the Local Governments in these matters. Therefore the attitude of the Government of India towards this Resolution is a perfectly simple one. We fully recognise the gravity of the evil; we fully recognise the necessity for taking every possible step to remedy it, but while we are prepared to give every possible encouragement, we are not prepared to embark upon any direct interference with the initiative and responsibility of Local Governments. The course suggested by my Honourable and learned friend appears to me the course which is proper, and on behalf of the Government of India I am prepared to undertake that the results of the discussion in this House will be communicated to the Local Governments, with a strong intimation of the deep sympathy felt by the Government of India towards the objects propounded by the Mover in his Resolution.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay: Non-Muhammadan): Sir, it is a matter for congratulation to the Honourable Mover of this Resolution that it has been received with such great attention and sympathy by Government. I have no doubt, whatever the fate of this Resolution, that the remarks that fell from the Government side sufficiently indicate the depth of feeling which this Resolution has evoked. Very recently there was a Triennial Report issued by the Bombay Government, as there are others by other Governments also, and I find in the last paragraph of that report the name "lunatic asylum" changed to "mental hospital." That in itself shows the change which the several Governments are contemplating in the treatment which this subject deserves. I do not think for a moment that the Honourable Mover ever intended to cast any reflection on any Local Government, or for the matter of that to suggest any indifference on the part of the Central Government, but it is all the same desirable to appreciate that it should be principally the function of the Central Government to direct the attention of the Local Governments to the necessities of the case. It is a pitiful situation that in the whole of India many people are driven insane by conditions and circumstances over which they have no control, and it is from that point of view that the matter should be given more direct treatment than what is suggested in the reply from the other side to the Resolution. Looking at the statistics supplied by this small report, which is limited undoubtedly to very acute cases which are taken to the lunatic asylum, I find it is people between the ages of 20 and 40 who suffer most from this sort of disease. It is easy to understand that despair in life, mishaps, shocks from family circumstances and several other causes combine to affect the mental state of mankind generally. How to improve the situation then is a task which must essentially belong to the Central Government. There should be co-ordination between the several Governments, and it is necessary that some joint action should be taken in this matter for the whole of India. It is suggested in the Resolution that some such

attention has to be paid and must be paid by the Central Government to the matter, and I do hope and trust that this Resolution which is up for discussion, will be better treated than by a mere assurance which we will have to depend upon, and which we gladly depend upon, and that it will be given effect to, as far as possible, with any amendments suggested from the Government side, so that there may be no mandate from this Government to any Government whatsoever. It is merely an indication of what the general public feeling is which is voiced through this Council and is recommended to His Excellency the Governor General.

THE HONOURABLE MAJOR-GENERAL SIR CHARLES MACWATT (Director General, Indian Medical Service): Sir, before dealing with the points raised by the Honourable Mover I must point out that the term "mental defective" as used in the Resolution is not quite correct and is, in fact, misleading. This term applies to the type of individual who is dealt with in England under the Mental Deficiency Act of 1913, that is in the various grades of Amentia, classed as moral imbeciles, feeble-minded persons, imbeciles and idiots for whom no special legislation exists in India: and under present conditions any such Act as that in force in England would be neither desirable nor workable. The Resolution is evidently not intended to apply to such cases, but to cases of definite insanity in their earlier stages when there is more prospect of cure than later on in the course of the disease.

As my Honourable friend Sir Maneckji Dadabhoy has told us, a Royal Commission on Lunacy and Mental Disorder has been sitting in England recently, the findings of which in due course may be of use in connection with the question of mental diseases in India.

The Resolution covers an enormous field beset with many difficulties and complications: and the introduction of new rules and regulations involving restriction of the liberty of individuals of defective mind or incipient mental unsoundness would require to be approached with extreme caution in India.

My remarks refer more especially to the Punjab of which I was Inspector-General of Civil Hospitals for more than 4 years, but are no doubt applicable to the other provinces. A study of the Census Reports and Asylum Reports, 1911 and 1921, indicates no actual increase of insanity in the Punjab, whereas for the preceding forty years there was one insane per 3,058 of the population, in 1921 the number was 3,571—or a decrease of 16·4 per cent. but grave doubts exist as to the accuracy of these returns. An infinitesimal proportion of the mentally disordered come for admission to the mental hospital.

According to Cole, in 1919 there were only 267 sane persons in the United Kingdom for every one certified insane: and when the uncertified mentally deficient—estimated at about the same number as the certified insane—are segregated from the general population and added to the total, a state of alarm might be excusable.

In London the number of beds in mental hospitals, excluding the large number of private hospitals and homes for such patients, works out at one for every 200 of the population, or upwards of 32,000 beds for the insane and mentally deficient. Since 1859 there has been a considerable apparent increase in the proportion of insanes to the population of the United Kingdom according to the figures given. It is rational to suggest that, with the advent of compulsory education, the school authorities would have an enormously increased opportunity of judging the intelligence

[Maj.-Genl. Sir Charles MacWatt.]

and mental capacity of each individual child taught, the natural result being that a greater number of cases of mental defect would be detected and brought to the notice of the authorities concerned in making the census returns.

According to statistics available the proportion of sane to insane in India is 14 times as great as the proportion of sane to insane in Europe if we consider the uncertified cases in India. If we take only those certified and under treatment in the Punjab Mental Hospital, the number is 114 times as many. But the facilities for obtaining accurate census returns do not exist in this country where an enormous number of insanes are able to till the land, look after animals, hew wood and draw water—so that they can take their place comparatively easily in a community where the average degree of intelligence is only very slightly above their own. In India there is an even greater prejudice than in England to admit the existence of insanity in one's family.

British asylums, now-a-days, are extremely well equipped, comfortable, even luxurious hospitals, so as to be positively attractive: the Indian asylums, though now called hospitals, are structurally little better than the modified jails or—at best—barracks. In England modern enlightenment as to the true nature of insanity, coupled with the improvement in the mental hospitals themselves, has done more to fill these institutions than any actual increase of mental disease among the population.

To cope with the problem of India's uncertified insanes some of the following measures are applicable:

- (1) Teaching of the general public by public lectures at health centres and in the adult schools which have been established in villages, the true nature of insanity.
- (2) Three or four compulsory lectures by an expert to students who are being trained as teachers at the training colleges.
- (3) Emphasising the fact that the earlier a case of mental disease is brought for treatment the greater is the chance for recovery: and discouragement of resorting to quacks and charlatans.
- (4) Improvement of Indian mental hospitals to make them hospitals in more than name.
- (5) Complete separation of criminal lunatics from non-criminal insanes.
- (6) Establishment of mental clinics in general hospitals and the reservation in them of separate ward accommodation for borderline and early cases of mental disorder. Such wards have been instituted in many of the British general hospitals with great success. Thousands of suitable and specially selected patients have been treated in them without "certification" and therefore, without being hall-marked as "lunatics".

One general hospital in Scotland reports a recovery of early cases of about 40 to 60 per cent.

The Indian Lunacy Act legislates for the compulsory certification and seclusion of wandering insanes who are unable to care for themselves or are unkindly treated. But only a comparatively small number of these are

brought by the police. Not merely the dangerous and violent maniacs but also the harmless imbecile should be gathered in—for the latter class, if necessary, separate institutions may be built in which the insane or imbecile deaf mutes should also find accommodation, where they could be educated up to the level of their intelligence and mental capacity by skilled and specially trained teachers.

One of the most important questions is that of ways and means. In the Punjab, at the present time, I am informed, the erection of institutions for the insane works out at Rs. 1,200 to Rs. 1,500 per head of the total accommodation, while the maintenance of patients in the Punjab mental hospital is Rs. 20 per mensem.

One difficulty in dealing with mental disorders is the great variety of conditions which they present. Thus, the most lasting and grave forms of mental unsoundness may at their onset present only a mild type of mental disturbance. On the other hand, some of the most acute forms may be of only temporary duration, almost sure to recover and possibly unlikely to recur. Again, other forms are marked by a natural tendency to remission and recurrence with intervals of apparent mental health. Still others, and these perhaps the most dangerous forms of mental disorder, are very difficult to detect and are carefully concealed by the patient for long periods; there are also chronic forms which present no dangerous or conspicuously objectionable characters.

The proposals I have outlined may appear somewhat utopian, but some may be found practical and practicable. And I am confident that all will hope to see a radical improvement in the care and treatment of the mentally unsound, the mentally ailing, and the mentally defective in India in the near future.

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): Sir, I do not think that this Resolution brought forward by my Honourable friend Mr. Haroon Jaffer has done any harm. In fact, perhaps it has done some good, because it has given Honourable Members of this Council an opportunity of listening to a very interesting statement of statistics from my Honourable friend Major General Sir Charles MacWatt. But what I would like to remind Honourable Members is that, as was pointed out by my Honourable friend Sir Maneckji Dadabhoy and again by the Honourable the Home Secretary, this question is one to be dealt with by Provincial Governments. A short time ago I appealed to the Honourable Members of this Council not to take on the part of a schoolmaster, nor to ask the Government of India to take on the part of a schoolmaster to Provincial Governments. The Honourable the Home Secretary has assured the Mover of this Resolution that the report of this debate will be sent to Provincial Governments. I take it that Provincial Governments always have an opportunity of reading the debates of this Honourable Council. Whether they always avail themselves of it I cannot say; but as on this occasion the Honourable the Home Secretary has said that he will cause the report to be sent specially to Local Governments, possibly with a blue pencil mark on it, I think the Honourable the Mover of this Resolution might very well leave it at that.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-official): Speaking for the Government of Madras I would like to draw particular attention to the fact that this question has already been receiving their attention. There is now a mental hospital in Madras and if my memory does not fail me the Madras Government specially deputed an

[Mr. G. A. Natesan.]

officer to go to England to study this subject and that officer is now in charge of the mental hospital.

I was very much interested in the valuable observations made by the Honourable Director General Sir Charles MacWatt who just spoke and I may add that on the last occasion—that is during Christmas—when there was held some sports celebration by the South Indian Athletic Association I found a batch of people from the Madras Mental Hospital taking part in the races and some of them had evidently been so well looked after that before the officer in charge and the judges (I was one of them) were able to finish counting 1, 2, 3, two or three of these men began to run. That shows that these institutions—at least so far as the Madras Mental Hospital is concerned and I do not pretend to have any personal knowledge of others—can do a lot for their patients. I really feel that it is not proper for a Central Legislature like this even to communicate a Resolution of this kind to local Councils. After all, what is the wording of the Resolution of my Honourable friend the Mover? It says:

“That Provincial Governments be asked to investigate the best means of dealing quickly and adequately with cases of mental defectives, particularly of the minor and curable kind.”

My Honourable friend Mr. Karandikar himself said that the Bombay Government was quite alive to its responsibility and that it has changed the name of lunatic hospitals into mental hospitals. So far as the Madras Government is concerned, I have given you a few facts. Certainly some of these Provincial Governments are quite alive to their responsibilities. If the Government of India, particularly after what has been said by the Home Secretary, in view of the provisions of the Government of India Act and the Devolution Rules, are to interfere at all, it must be on a matter in which they must be honestly and strongly convinced that Provincial Governments are not giving to a particular matter a sufficient amount of attention which can reasonably be expected from them, and I do not think in this case we can say that Provincial Governments are not alive to their responsibilities. If a Resolution of this character is to be communicated, it may not be considered as a slur, but surely the Local Governments may say “What is the meaning of the Government of India communicating Resolutions of this character,” and the Government of India will not be justified in telling them that sufficient attention was not being bestowed by the Provincial Governments. I say therefore no purpose is served by asking this House to pass this Resolution but the object which the Honourable Mover has in mind will be abundantly achieved by the proceedings of this Council being circulated to the various Local Governments, and the Home Secretary has assured us that the attention of members of the Provincial Governments who are interested in the subject will be called to it, and no doubt if in any particular province it was not properly attended to, they would do so. There are Ministers specially in charge of these subjects and I really think it is neither proper nor consistent with the dignity of this House to draw the attention of Local Governments to this matter, when obviously most of them are paying attention to the question. I therefore request my Honourable friend not to press this matter but be content with the assurance that the proceedings will be circulated to the Local Governments.

THE HONOURABLE MR. HAROON JAFFER: Sir, I thank the Honourable Members who have supported my Resolution. I have listened to the speech

of the Honourable Mr. Crerar with interest. I have no intention of casting any reflection on any Provincial Government. If the Government of India do not wish to interfere in Provincial matters then I do not understand why they should not take joint action with them with regard to the object of this Resolution. However, Sir, in view of the assurance given by the Home Secretary on behalf of the Government of India, I do not wish to press my Resolution and beg permission to withdraw it.

THE HONOURABLE THE PRESIDENT: Is it your pleasure that the Honourable Member be given leave to withdraw his Resolution?

(Honourable Members: "Yes.")

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

THE HONOURABLE HAJI CHOWDHRY MUHAMMAD ISMAIL KHAN (West Bengal: Muhammadan): Sir, in view of the fact that the Financial Statement is to be presented very shortly, with your permission I do not wish to move my Resolution* at present.

THE HONOURABLE THE PRESIDENT: It is not sufficient for the Honourable Member to say that he does not wish to move it; I must ask him to withdraw it.

THE HONOURABLE HAJI CHOWDHRY MUHAMMAD ISMAIL KHAN: Yes, Sir.

INDIAN CRIMINAL LAW AMENDMENT (REPEALING) BILL.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay: Non-Muhammadan): Sir, I rise to move:

"That the Bill to repeal certain provisions of the Indian Criminal Law Amendment Act, 1908, as passed by the Legislative Assembly, be taken into consideration."

Before I refer to more particulars about this Bill, I have to allude to a circumstance or two. I welcome in this Honourable House the presence of two Honourable Members, whose presence would lighten my task. I know that there has been much of literature before this Honourable House and no particular effort is needed on my part to acquaint this House with what has passed in connection with the Act which I want to repeal—the passage of that Act through the first Council of 1908 and the other Councils that dealt with the same measure. I am glad that at least one Member who was a Member of the Imperial Legislative Council in 1908, is present here to testify to what I am going to say in connection with the present Bill. Honourable Members will easily understand that I allude to no less a personage than my Honourable friend Sir Maneckji Dadabhoy. On the 11th of December 1908, the very day the Bill was passed, he had just entered the Imperial Council. That lightens my task, Sir, as far as the proceedings of 1908 are concerned, and I may have occasion to refer to what my Honourable friend said on that occasion. I am also relieved in a very great measure by the fact—and I am appealing to the Chair, I cannot allude to the personality that occupies the Chair—that you, Sir, when in the other House considered the matter the result of the appeal in that House. You have had ample opportunity of judging the merits and demerits of the question that was before the Legislative Assembly. I am not in the least affected by what was done by you

* "This Council recommends to the Governor General in Council that immediate steps be taken to reduce the price of post-cards from half anna to quarter anna."

[Mr. R. P. Karandikar.]

in that Assembly, but I have no doubt if a contingency arises at all and if there is a chance of any casting vote, you will forget in what way you have voted there, and I have not the smallest doubt that you will support the right cause. Permit me, Sir, on this occasion to welcome among us in a different capacity one who was so largely admired by us and who so fittingly occupied our Chair. I allude to the presence of the Home Member, who, I have not the smallest doubt, will throw much more light in this matter, which has been fully discussed in the other place as he did in answering the torrent of arguments that were hurled against the measure in the Assembly. I proceed further to point out, Sir, to this Honourable House, that Act XIV of 1908 appears before it in a mutilated form, one of its legs having already been amputated by Act V of 1922, passed by this Honourable House in February 1922. The Act I am referring to is Act XIV of 1908 and it consisted of two parts, as Honourable Members are aware. The first part dealt with the procedure which was to be adopted in dealing with certain criminals or alleged criminals; the second part of it dealt and deals with associations. The first part has been deleted by Act V of 1922. Very few sections were contained in that Act, about 18 I think, of which five are in force; a large number of them are *non est*. It is the smaller portion that is being dealt with by the present Bill. In 1908 at least there was one Member who is present here to-day who added considerably to the deliberations of that Council of 1908. I am put in mind of what the Honourable Sir Maneckji Dadabhoy then said. When the Bill was proposed and passed in one and the same day, the Honourable Sir Maneckji Dadabhoy, while lending his support to this measure, said:

"But, my Lord, though I support this legislation I must most distinctly state that I should not like to see it permanently placed on the Statute-book of our country and that I would urge that as soon as a normal state of things is restored in Bengal and I trust that may not be far distant, Your Excellency's Government will set itself to repeal this measure. I think it would be advisable and more popularly acceptable if the Honourable Mover of the Bill could see his way to insert a provision limiting the operation of the Act for a stated period only."

I am emphasising the last few words that fell from the Honourable Member. No doubt, Bengal is yet the theme before us all and it is Bengal that is going to affect India. But I am referring to what occurred in 1908. It was then suggested and hoped that a period should be stated. The other Indian Member, the Maharaja Sahib of Darbhanga, wanted to know in what manner the Government were in a position to find out that certain associations were criminal. The third Member, Dr. Sir Rash Bihari Ghosh, as a lawyer, pleaded for the inclusion of the element of knowledge in the provisions of the Act, thus indicating that it should be for the prosecution to prove, in the first instance, that a certain association was criminal and that it was improper to lay the burden of proof on the associations simply for the reason that Government wanted to declare certain associations as criminal. Those were the three Members who took part in the discussion. As regards the period, of course, no promise could be held out, but the Honourable Member in charge of the Bill probably had an eye on a year or two within which it was possible, according to the then circumstances, to repeal the Act, but he added that it would be quite easy to repeal the enactment as soon as the circumstances indicated that there was no fear whatever and therefore no need to retain the enactment. Now, those were the circumstances which enabled the passage of this Bill in the Council of 1908. It is enough to point out that no doubt then

existed that it was going to stand on the Statute-book not for a very long time and everybody looked forward to an improvement in the circumstances of the country. Soon after that, about 1910 I think, some Local Governments asked for permission to extend the enactment to their own provinces. Bombay was one of them, and I know that there was an effort made on my side to declare an institution as coming under the enactment. But I am happy to tell the Honourable Members here that that particular institution which was the subject of governmental attention, has since emerged under another name and has been supported on all hands as being a laudable institution. Barring that solitary instance, there was nothing which came from the Bombay side. And, indeed, when the Bill came to be discussed later on it was accepted on the side of Government that since 1911 no instance could be traced in which the Act was made applicable up to a certain point of time to which I will come presently. In this connection the date of 11th December 1908 forces itself on my attention. While just the night before (10th December 1908) I was listening to the admirable discourse on the Reforms in London which the late Honourable Mr. Gokhale was giving before he left for India with such a jubilation, hope and trust that, when he went back to India, he would find that the Reforms could do all that was necessary under those circumstances, little did he think that on the very next day (11th December 1908) there should have been passed in the Indian Legislative Council an enactment which dealt with the liberties of the people. Dr. Rash Bihari Ghosh pleaded for not passing the enactment as quickly as that and asked the Government to wait for a fortnight or so in the hope that the Reforms might possibly come and there might be no occasion thereafter to introduce any such repressive measure. But it seems to me that there is some irony of fate connected with the Reforms. I think these three R.'s go together—Reforms, Recrudescence of Anarchy and Repression. There are two schools of thought in this matter. Both of them undoubtedly desire to produce a state of atmosphere acceptable for the Reforms to come in, but they have their different methods as some of those who want to have Swaraj have their different methods. One school of thought always considered that it was much better so to have the back-ground by repression that the Reforms, if they were flimsy at all, might be accepted and that the irritation caused by repression may vanish. Others said: "No, we must not do that. If you want to have any Reforms, create an atmosphere of goodwill, so that the Reforms as a whole may contribute to the safety of the British Empire in India." There has been a struggle of this kind. Honourable Members who have had an occasion to go through "Morley's Recollections" will find it depicted in the correspondence that passed, a portion of which only is available to the public, indicating how zealously Morley corresponded with the man on the spot and indicated that in spite of the trust that was to be reposed in the man on the spot advantage should be taken of the advice coming from the other side. There has been this struggle, and for some time in 1908 one school was opposed to the Reforms. But the Reforms did come. It was soon after (on the 17th December 1908) that the papers connected with the Reforms were laid before Parliament. After all, the Reforms of 1908 did succeed in a manner, so much so that India was found to be much quieter and, indeed when Their Imperial Majesties graced India with a visit, the time was considered to be as quiet and as peaceful as anything can be. I was a personal witness, in 1911-12 at Delhi and I can say from personal knowledge that the whole of India cheered their Imperial Majesties in Delhi. The times were peaceful. If the promise held out in 1908 by the Mover

[Mr. R. P. Karāndikar.]

of the Bill was to be put into operation, that was the time in 1912. But it appears that everybody was oblivious to what had been done with reference to this matter, and no one ever thought of bringing it before the public again. No steps were taken. That was really the time for repeal, but it was not done. Later on however, in order that such cases might be dealt with by the ordinary law of the country, some sections were introduced into the Penal Code that dealt with conspiracy. Important sections were added. The purpose was served and nobody needed to revert to the Act of 1908. Further, from 1914 onwards until 1918, all India was quiet, not because you had the repressive laws here, but there was peace reigning in India with a view to sustain the Imperial declaration that England's difficulty was India's opportunity. All India joined for the purpose of defeating the common enemy. With 15,000 men on the spot here the whole of India responded to the call and supported His Imperial Majesty's Government in the country. That peace was not due to any repressive measures whatsoever. Again, on another occasion on the 11th November 1918, I accidentally happened to be in London and I found the whole of London had poured out into the streets and I with my head-dress on was acknowledged to be an Indian and everybody came up to me and said "India has saved us." Such was the loyalty of the people then. That being so, I thought really there was no occasion whatsoever to maintain this enactment of 1908. It should have disappeared altogether. Then came certain occurrences in certain other parts of the country, and then came the Repressive Laws Committee. The report of that Committee makes it perfectly clear that the Repressive Laws Committee depended on the observations of the Bihar and Orissa Government. The Bihar Government had much to do with Champaran and the activities of non-co-operators, but the Repressive Laws Committee looked forward to an opportunity to repeal this enactment as early as possible and expedite its repeal. That was the wording that appears in the report. Now if this was done because of the observations of the Repressive Laws Committee, which depended entirely upon the view taken by the Bihar Government of the situation then existing, I think the time has come when this enactment, which casts a slur on the administration of justice, should be removed. When I say it casts a slur upon the administration of justice and violates essential principles of law, I allude to the criticism to which this has been subjected by one of whose name Honourable Members are aware, Sir Chimanlal Setalvad. In dealing with this enactment he pointed out how it affects the principles of justice and procedure as they are observed under British rule. Not for a moment could it be sustained that it gives any opportunity to the associations concerned to prove that they are not disloyal; that they are not unlawful. That is the most effective criticism that could be levelled at it. And Sir Chimanlal pleaded that if Government were prepared to do anything with reference to that defect in the law, he was going to reconsider the situation. I am not going to impress on this House which way he voted; that does not concern us. It may be a matter of history of legislation that he voted against the Government side, but at any rate that was his view. Under those circumstances there is no justification for this law to continue. Part I has gone. It is the second Part which is being dealt with by this Bill, and when I am on the principle of the Bill I will only at this stage refer to the principle of the Bill being rectified. It was a mistake which appears to have been

committed under the exigencies of the situation in 1908 and there is no justification to continue the Act hereafter.

Now, before I sit down, let me assure Honourable Members that if it is supposed that it is these repressive measures that contribute to the peace of the country they are very much mistaken. No repressive measure for the matter of that could convert anybody to loyalty. The burden is cast upon us, the educated people, to maintain the dignity of the British Empire and the peace of the country. We are the people to maintain it, and when therefore we are charged with a certain duty of maintaining the dignity of British rule, we are charged equally with the duty of maintaining peace, and when we in the name of the nation plead that such repressive laws will not do, our word may be taken. Of course I cannot stand security for each and every one, but I do stand security, so far as lies in my power, for those whom I represent and for those for whom I speak. Instances may be quoted against me here and there. But for the matter of that who can say that a country 16 times as large as Great Britain, with a population seven times as large, instances may not happen here and there which show that repression is necessary? But we are looking to the generality of the cases. However we may account for the existence of these instances, the continuance of a law which disgraces the Indian Statute-book is most repulsive, and I appeal to this House not to maintain this on the Statute-book. Do not in this way give a handle to Bolshevism; do not let other people know that India is seething with sedition and disturbance of the peace and tranquillity, and hold forth India to the whole civilized world as being beyond and incapable of reform in any sense. It will be a handle to these people to declare from the house tops that this is just the time to arm Government with this thing and that thing. What for? For the purpose of putting down anarchy. There has in fact been no such anarchy. Anarchy against whom? There are methods and methods of looking at anarchy. When for instance you are under the Government of India Act, section 41, going to trust India later on, it may be 10 years or it may be 5 years hence, and to find out for yourselves whether India is fit for more reforms, agitation of that kind is no anarchy. It is not anarchy to prove to the world that India can get on without the aid of the bureaucracy. It is nothing of the kind. And consequently, unless you remove the causes of anarchy, it will be absurd to deal with anarchy from that point of view and to stigmatise the whole nation by continuing upon the Statute-book a law which is not required. I appeal to this House to accept this motion. I have put it briefly because as I said before most of the literature touching upon the subject has been before Honourable Members for some time and repetition is pointless; I never give myself to repetition. I therefore move that this Bill be taken into consideration.

THE HONOURABLE SIR ALEXANDER MUDDIMAN (Home Member): Sir, I regret very much that up to the present time I have not been able to revisit the House in which I spent so many happy days and when I listened to so many interesting discussions. I regret even more that my first appearance in this House should be to oppose a motion brought forward by an Honourable Member of this House who is also a friend of mine; but, Sir, those pleasant recollections must in no way deter me from doing what is my duty on this occasion.

My Honourable friend has told the House a good deal of the early history of this legislation. He has not said much about what transpired

[Sir Alexander Muddiman.]

thereafter. He has told us how people voted in 1908. He referred to the action of the Minto-Morley Council in connection with this Act, but he has not mentioned—and possibly it was not a strong argument in favour of his own proposition—he has not mentioned that in the first Legislative Assembly a motion was brought forward for the repeal of this Act. The motion was thrown out at the very earliest stage. The House refused leave to introduce the Bill. It is perfectly true that that House has changed its opinion, but I am at any rate entitled to use that as an argument that not only was this legislation approved by the Legislature as it existed in 1908 but also that it was approved, or at any rate its repeal was contemptuously rejected, by the Assembly in July 1923. I think I am justified in using the argument to this extent.

Now let us before we stray into generalities consider exactly what this law is which it is sought to repeal. We are told that this is a law that is so intolerable that it should be removed as a blot from the Statute-book. Now I am not prepared to contend—and I do not put my case on that at all—that this is not a special law. It is a special law, and I myself from my own training and my own instincts am opposed to special laws. But that is a proposition which like all propositions is subject to reservations and exceptions. If you have special circumstances you have got to have special laws. If Government cannot maintain the peace and order which is the fundamental duty of all Governments, for a Government which does not perform that duty is not fit to be a Government—if, as I say, Government cannot maintain peace and order by ordinary measures, it must maintain them by extraordinary measures. I was told in another place when I used that argument “Quite true, do so by extraordinary measures but don’t use special laws. Wait till the country is in such a position that it requires martial law and then declare martial law.” That, Sir, is a doctrine which I am quite sure there is nobody in this House who will not repudiate. Because you have not got a fire engine therefore you are not to put a bucket of water on the fire but let the fire grow till you have to pull down the house. Is that an argument that appeals to you? No, Sir, I am sure this House will reject it.

Let us now look at the actual provisions of the law. As my Honourable friend has pointed out Part I of the Act has gone. Part II that remains deals with unlawful associations. I do not know whether it is contended that an unlawful association is a thing which should be encouraged or whether this House regards unlawful associations, as I am sure it does, as a form of association that may be a very great danger to the State. That I think everybody will accept. What may be done by one man with comparatively little danger to the State may not be done by bodies of men, for, as has often been pointed out by political thinkers, a new spirit is engendered by the mere fact of association. The law we are considering, in its first section, defines an unlawful association (a) as “an association which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts.” As regards that section can there be any doubt in the mind of any Member of this House that an association of that class is an association which must be stamped out? What does it do? It “aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts.” That obviously is an association which will get no sympathy here. Then I turn to what I know is the gravamen of the charge against this law—(b)

which says "or which has been declared to be unlawful by the Local Government under the powers hereby conferred on it." It has been argued that that is a very great power to give an executive body. I admit it. That is not a point that need be laboured. But let us go a little further and see under what circumstances the Local Government may act. The Local Government, in order that it may be able to declare an association to be unlawful, must form the opinion that the Association interferes or has for its object interference with the administration of the law or the maintenance of law and order, or that it constitutes a danger to the public peace. Now you may argue that the Local Government may form an incorrect opinion on these points; but assuming that the Local Government forms a correct opinion on it, then I submit this House can have no sympathy whatever with an association of the character I have named. That is really the whole gist of this Act. It enables us to deal with these unlawful associations which I specified.

As regards section 17(1) I think there can be no reasonable attack on the provisions of the Act. Section 17 (2) is of a more contentious character, and to justify it I think I have to show the House that there are existing in India at present circumstances which render it necessary for me to ask you to support us in retaining the law as it stands. My Honourable friend referred to the fact that India is an enormous continent and that disorder naturally from time to time breaks out over territory of that extent with a population of so many millions. I am entirely at one with him in that. But surely that is all the more ground for arguing that an executive Government which controls a continent of that extent and a population so large must have rather more powers than are necessary in a homogeneous and comparatively small country. I merely make that point in passing. But the vastness of our Indian Empire is curiously illustrated by the fact that, when the Legislative Assembly was discussing this Bill, almost simultaneously there had arisen in a remote part of the Indian Empire a condition of things which made it necessary for the Local Government almost at that very moment to put this Act, which is very rarely used, into force. A dangerous movement characterised by intimidation and boycott suddenly arose in certain districts in Burma, and the Government of His Excellency Sir Harcourt Butler, a Government which, I think all those who know the head of it will agree, is not likely to act rashly, felt it necessary to use these very powers. It happened almost at the same time that the Assembly was saying that it was unnecessary to retain the Act, that the Government should not have these powers, that they are no good against anarchists, and there was no other use for them; and a few days later the need arises and the power was wanted in Burma.

Now, Sir, my Honourable friend in surveying the previous history of this Act referred to the report of the Repressive Laws Committee. I need not remind this House, for there must be many Members fully familiar with that Committee, that they did consider the question of the amendment of this Act and other so-called repressive laws—an unfortunate term, because all laws must be repressive, else they are not laws. But I will read to the House what the Repressive Laws Committee said in connection with the Act which we are now asked to repeal. The reference is to paragraph 24, and if the House will bear with me for a minute or two, I will read a portion of that paragraph:

"As regards the Indian Criminal Law Amendment Act, 1908, it has been suggested that sections of the Indian Penal Code are sufficient to cope with any situation that is now likely to arise."

[Sir Alexander Muddiman.]

That I think was an argument also put forward by my Honourable friend.

"It is generally accepted that Part I of this Act has failed to achieve in Bengal the purpose for which it was designed. As regards Part II, the conspiracy sections of the Indian Penal Code might meet the case if, but only if, evidence were forthcoming. It was in no small measure the impossibility of obtaining evidence owing to the intimidation of witnesses that led to this enactment. As we have already seen, there is definite evidence of certain organisations encouraging acts of violence or resorting to intimidation. Recently . . ."

And this is one of the instances which must be well within the personal experience of many Members of this House; the Committee I presume quote this particular instance, because it must have impressed anybody here living in Delhi at the time. They say:

"Recently in Delhi it has been necessary to declare certain Associations of Volunteers unlawful under section 16 of this Act."

That is the very section to which the real attack on this Bill has been directed:

"We have carefully examined the circumstances which led to this action. The Volunteer movement began with 'social service,' but the adherents soon developed a definite tendency to interfere with the duties of the police and the liberty of the public. They then began to intimidate and terrorise the general body of the population. There was a tendency towards hooliganism. It has been proved that some of these Associations resorted to violence, that their behaviour at railway stations and public meetings was objectionable and rowdy, that they obstructed the funeral of an honoured citizen and held a most undesirable demonstration at the house of another."

I do not propose to weary the House by reading the remainder of the statement of events in Delhi which were not then singular in Delhi, though I am glad to feel that such occurrences have ceased in the greater part of India, we hope, for good. They then went on to say:

"Actually Part II of this Act has been sparingly used. Its object is not only to break down existing unlawful associations, but to deter young and comparatively guiltless persons from joining these bodies and to discourage the supply of pecuniary assistance. We regret that we cannot at this juncture recommend the immediate repeal of Part II of this Act."

That was the opinion of the Committee, of which the President was a very distinguished Indian, the Law Member of the Government of India, a man well known for his sympathy with every liberal movement in India. It was Sir Tej Bahadur Sapru who signed that report as President.

Now, I may be told that since that report was signed there has come over India a great change, that we are now in a better position. I have admitted it in one respect. A certain form of agitation leading to breaches of the peace has now diminished. But what is the position? Let us look at the rest of the country. When I was arguing this matter in another place, I laid stress on the condition of Bengal. I gave the House fair warning that matters were coming to a head in that province; they have come to a head in that province as this House well knows. I do not think it will be necessary for me to do more than state what is now an admitted fact, admitted by all sections of political thought, that there is a dangerous revolutionary conspiracy in Bengal. Well, Sir, I am one of those who think that when conspiracies are in the air, it is not the time for Government to deprive itself of its weapons. If the House wishes it, I will go through the tiny record of crimes in Bengal. Well it seems that the House does not wish me to do that. Then I take it Honourable Members accept the position. I have shown you how in Burma within two or three

days of the Bill being passed in the other House it was necessary to resort to the Act for the very purpose for which it had been used before. I have here an account of the usual terrorism, intimidation and boycott which took place, purely for the purpose of embarrassing the authorities in dealing with a matter which can be raised in a perfectly constitutional and harmless manner. Unfortunately, there is another part of India which is in a condition that we at any rate can hardly regard as desirable. I refer to the Punjab. There have been grave troubles. Things look better I am glad to say, but there is a condition of affairs in which we certainly are not in a position to give up any legitimate weapon which may be available for checking the forces of disorder. Sir, in dealing with this question the Repressive Laws Committee referred to organisations outside India which are occupied in trying to create revolution within India. It was thus a menace as far back as the date of the Committee's report. It has been referred to by my predecessor on several occasions in dealing with Bills of this character. I used to feel myself that there was some difficulty in Government making statements of that kind; they seemed to be dealing with something rather intangible. One said to oneself, "an Indian is a person to whom the methods of those agencies from outside will not appeal". One did not regard the soil of this country as a likely soil for the propagation of their ideas. Well, Sir, unfortunately, we have had judicial findings of the existence of organisations of that kind. The Government, reluctant as they always are to prosecute, were forced to institute proceedings at Cawnpore, which finally came before the Judges of the Allahabad High Court. And I should like to read to the House an extract from the concluding words of their judgment. They came to a judicial finding, a finding that the House cannot afford to disregard when it comes to consider the repeal of a measure such as is now proposed. They said:

"Absurd and unbelievable as their aspirations were, the fact remains that each of these men entered into and carried on this conspiracy with each other with Roy in the most serious spirit. Whilst the conspiracy had for its principal object the overthrow of British rule in this country, the conspirators looked even beyond this. Exhibits 9, 9a, 11, 12 the pamphlet 'What do we want', and many other documents set out clearly what they aimed at achieving and how they hoped to achieve it. British rule, government by upper and middle class Indians alike, were to be swept away, the confiscation of property was to be wholesale. A 'People's Party' was to be the initial step,"—and this is very interesting—"having a public programme designed for their betterment which in no way offended against the law. Within that apparently harmless body 'illegal' activities were to be prosecuted by an inner party consisting of 'all the revolutionary nationalists'. Violence and destruction of property were to be encouraged and conflicts to be precipitated. At the propitious moment, resources and armed help were to come from 'the universal revolutionary party, i.e., the Communist International'."

Now, this is not a statement made by an executive officer. It is the considered judgment of two Judges of the Allahabad High Court, one of whom was the Chief Justice himself. I think I can safely rely on it to establish the proposition that there is real danger from outside to India. I am perfectly sure that there is not only no one in this House but no reasoning Indian who desires that kind of interference. Whatever there may be between us, they do not desire, I am sure, that terrorists from other countries should bring bloodshed and loot into a land which, on the whole, is peaceful and contented. In dealing with a Bill of this kind one cannot refrain from asking whether you intend to allow any organisation or association to usurp the power of Government. That is the question I have to ask this House. There comes a time when, if associations are not dealt with, they will replace the Government.

• [Sir Alexander Muddiman.]

And what does that mean? It means that you and I, the peaceful citizens, will not be able to go about our lawful avocations. We shall be prevented from doing what we are entitled to do. It is said that laws of this kind are repressive and that they are a blot on the right of the liberty of the subject. I deny it entirely, if stated in that form. They prevent the tyranny which must necessarily arise if any individual association establishes its own will as against the Government. Just as the liberty of speech is limited by the law of libel, so must the liberty of association be limited by the right of the individual to carry on his ordinary social life. I do not think that in a body constituted as the Council of State is I need discuss that point at greater length. The points I make are these. This law is admittedly a special law. I agree. I do not like special laws any more than you do. I agree that Government should resort to special laws rarely and in exceptional circumstances. I have been told that we should enact a law on each occasion when it is necessary. Now, Sir, that argument is not valid. It is disproved by what happened in Burma. If the Government of Burma had, from the absence of this law on the Statute-book, been unable to have dealt with the situation at once legislation would have been necessary, and in the meantime the situation might have got out of hand. I have mentioned that argument because I have heard it very often put forward, and it is at first sight a very plausible argument, that you should deal with a special situation by special legislation. I have already pointed out that there is the danger of delay in that. Now, this law, as you know, only extends to Bengal, *proprio vigore*. No Government is willing to extend the law like this except it is forced to do so. Unless the Government does extend the law, it is not in force. After what I have said, I think I may with every confidence invite this House not to take away a weapon from the hands of the Government at a time when the hands of the Government ought to be strengthened, and to reject a Bill brought in by a private Member who is not responsible for law and order. This Bill has been brought in against the wishes of Government who are responsible for law and order and who tell you with all the emphasis that they can command that they regard this as a law which they desire to retain in the interest of peace and order and which they ask you, therefore, not to repeal.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-Official): Sir, I wish to move that this Bill be referred to a Select Committee.

The necessity for this arises from the circumstances that only to-day we heard it stated by the Honourable Mover that all the literature is here and again the same minute the Honourable the Home Member was able to show that there is a great portion of it to which no reference has been made. So you see from these statements that there is great room for an inquiry. I have myself always felt that in regard to legislation of this character reference has to be made to the mid-Victorian literature on the subject. There used to be what are known as coercion laws which were introduced in Ireland. Those laws, though they were not exactly the same laws as are introduced here, were very much on these lines and those laws there used to be opposed on the score that the Government had exceeded what were called emergency powers. At the

end of those laws, however, there used to be a clause to the effect that within a certain period after the use of those laws, Government was under a necessity to justify the initiation of proceedings under those laws in a court. I believe in Ireland it used to be a court. I think if that provision was kept in view we might induce the Government to justify their action, before the Council and not before a court, that is before the Committee that we elect here annually to advise the Home Department. Every year we elect an advisory committee to the Home Department. The other House also does the same, and if Government, after taking emergency powers and exercising those powers whenever they think necessary within six months have to satisfy us, and secure the concurrence of these Committees which we annually elect, then the matter would be all right. It would not be open to the objection of Government having to disclose their hand, or produce evidence which they are unable to produce. It is not also open to the objection that the criminals would get information of what the Government are going to do, and therefore take measures to disappear or conceal their tracks. It is not also open to the objection that has been taken before that it unduly limits the powers of the executive Government to stop anarchy. My proposal gives Government all the powers necessary to suppress that. It gives them full liberty to use these exceptional powers; it does not give any notice to the criminals, and yet it utilises an institution which exists here, namely, the few Members which this House appoints here and I believe the other House also appoints to act as an advisory body to the Home Department. It is from the Home Department that measures of this kind arise, and if that Department could satisfy the Committee that has been appointed to advise them, the matter would be all right. That is all I wish to introduce. I want to substitute that for the Bill which is sought to be passed here. Instead of that Bill we shall have this clause that, after exercising these powers for a certain number of months, the Home Department will satisfy the Committee which we elect annually, and if they do so, then the matter will be all right. This cannot be done at once, and I propose that this Bill be referred to a Select Committee, and before that Select Committee it will be possible to show Government the legislation on this subject as it exists. The new Treason Bill that has now been introduced in Ireland contains provisions somewhat similar to this, and I shall be in a position to put that literature before the Committee, and then the Committee would be in a position to decide what to do. In common with every one else, I also dislike this legislation, but in common with many others, I feel that it is necessary that Government should be armed with the power to put down anarchical movements, and even to nip them in the bud, but I think that Government, although given these powers, should at the end of a certain time, be under the necessity of justifying what they did before a certain body of persons. In Ireland they do it before the judiciary. But we have a Committee whom we appoint to advise the Home Government and, if this Committee are satisfied, it will be enough for our purpose. This would secure, I think, all the advantages which the present law gives, and also conciliate that section of the public which says it wants to have information about the matter not in detail but to this extent that there are other persons independent of Government who are satisfied that this legislation is necessary. So my proposal has all the advantages both for the people as well as for the Government executive, and for that purpose I ask this House to send this Bill to Select Committee where all these matters will be threshed out, and

[Mr. G. S. Khaparde.]

I believe we shall come here with a proposal which will be acceptable both to Government and to us.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General): Sir, I am afraid I must oppose both the original motion and the amendment. I understand that our rules of debate will permit me to deal with the question as a whole now, and I shall therefore proceed with observations both on the Bill itself and on the motion. Sir, my Honourable friend Mr. Karandikar was quite correct in stating that, on the first day that I joined the Imperial Legislature and on the first occasion of making my maiden speech I had the misfortune to support this Act. I own that I took some part in the enactment of the measure of 1908 which is now sought to be repealed. My Honourable friend the Mover in this House is a clever lawyer. He has adopted this morning a most tactical, or rather a strategic, move. He thought the best policy would be to beard the lion in his den and to silence my adverse vote on this occasion by a reference to the statement which I then made, rather by a reference to the appeal which I made to His Lordship in 1908, and on the basis of that appeal my Honourable friend has laid the foundation of his case this afternoon and has wished for my support. I honestly wish, and I assure my Honourable friend so, that I could give him my support on this occasion. He has rightly said that I then made a deliberate appeal that no sooner were normal conditions restored, and I hoped that day would not be distant, the Government would see the advisability of repealing this measure. Sir, if I could lay my hand on my heart to-day and say that normal conditions have been restored, I would be guilty of hypocrisy. I would be a fraud, if I did not support my Honourable friend. It therefore becomes necessary to deal at some length with this Bill in order to convince this Council that the attitude I am adopting upon this occasion is not opposed to the statement which I deliberately made on the previous occasion and is compatible with the existing state of affairs. Sir, this Act originally was doubtlessly enacted under exceptional circumstances. This Act was enacted for the purpose of putting down a revolutionary revolt. The original idea was to stem the tide of sedition, and, if possible, stifle it by the adoption of a measure which gave the executive the power of appointing special tribunals to deal with cases falling within the Act with speed and severity. It is equally true, and there is some ground of legitimate complaint on the other hand, that the original purpose of this Act was not strictly adhered to, because Government at a later date applied the provisions of this Act to political associations and did not restrict it to anarchical bodies and associations. But the language of the Act itself was incapable of that construction, and I am even very doubtful if it was not the original intention of the framers of the Act when it was put forward by Sir Harvey Adamson in Council. I do not believe he intended to restrict its scope and its applicability to anarchical associations only, and not to extend the same to political bodies. Now, Sir, one important question before the House is that the normality to which my Honourable friend rightly referred has not yet arrived. If that normal position has been reached, it is the duty of this Council to-day to support my Honourable colleague there and to repeal this measure. My Honourable friend the Home Member stated that by tradition and instinct he is against special legislation. My Honourable friend belongs to the Civil Service, and I say

that the remark which he has so appropriately made applies in a greater degree to a man like myself who has been nurtured in law, who for a period of 30 years has been at the Bar daily and constantly fighting Judges against their interpretation of certain laws, and demanding generally an interpretation always in favour of the subject. Sir, on this occasion I may say that no sane man could honestly say that he approves or is in favour of special laws. My Honourable friend there has made a great point of the repressive character of this legislation. My friend forgets that all criminal laws, all laws that are framed for the purpose of suppressing crime, are repressive in character. There is no criminal law which is not of a repressive character. Every criminal law is repressive in its nature, in its character, and as such it exercises a sort of terror over the culprits and prevents them from perpetrating offences. Laws are either of a punitive or of a preventive character. I do not see any valid objection to any State adopting in a moment of emergency special laws to meet special circumstances, and it would I say be the height of folly to urge that Government should not be armed with special weapons to deal with special conditions and a special state of affairs. All European countries have done so, and so have most of the Eastern countries including Japan, which is one of the most rising and conspicuous of Eastern nations. She has also adopted punitive measures for the purpose of suppressing crime. Sir, this disposes of the question as to the repressive character of the legislation of 1908.

Now on the existence of normality my vote in this Council will depend. As I said, if I could honestly believe that circumstances are normal I must vote with my Honourable friend there. As my Honourable friend remarked the literature on the subject is copious and ample, but let me in chronological order give my Honourable friend over there a brief resumé of the catalogue of crimes. I call it advisedly a catalogue—crimes which have taken place during the last 18 months. I will not deal with the details of each of these offences as I have no time at my disposal. I will only just mention them for the purpose of showing this Council whether this is the opportune time for repealing a measure of this kind.

1. On the 14th December, 1923, the Chittagong dacoity took place when Rs. 17,000 was robbed. This offence was traceable to an unlawful association.

2. On the 24th December 1923, pistols and cartridges were recovered by the police in a private scuffle. It was presumed that these pistols were the property of unlawful parties.

3. On the 11th July, 1924, Mr. Day was shot in Calcutta, he being mistaken for the Commissioner of Police. The man admitted before he went to the gallows that he wanted to shoot the Commissioner of Police and that he was a member of a particular party.

4. On the 15th March, 1924, the police discovered dangerous bombs in searching a particular house. It was then discovered that that house belonged to an association formed for the purpose of subverting law and order.

5. On the 30th March, 1924, Mauser pistols stolen in 1924 were discovered, and their existence was traced to an unlawful association.

6. On 13th April a cowardly attempt was made to shoot Mr. Bruce.

[Sir Maneckji Dadabhoy.]

7. On the 25th May a Sub-Inspector of Police was shot down in a Calcutta street. His only offence, as Honourable Members will see, was that he was discharging his duty and was true to his salt.

8. On the 13th June, 1924, an arrest was made of a person possessing a loaded revolver with a large number of cartridges. He could not account for their possession, and it was ascertained that he belonged to an unlawful association.

9. On the 23rd August, 1924, a dastardly bomb outrage was committed in Mirzapur Street in which an innocent man lost his life. It was also then found out that this was caused by the tenets and the preachings of unlawful political associations.

Sir, this is the catalogue of crimes during the period covered by the last few months. If my Honourable friend thinks that these are not circumstances of an abnormal character, I may refer him to a few of the bigger riots since 1921: The Malagaon riot; the Sitapur affair; the Rae Bareilly affair; the Chauri Chaura affair; all these events or incidents have taken place since 1921. I submit that such a catalogue of crimes is a sufficient answer on this question of normality, and I think it will convince the most obdurate of politicians here that it is not a right and proper thing, when Governments have to cope with a trouble of this magnitude, that we should deprive them of one of the most important and effective weapons in their hands to deal with crime. Sir, I know of the common-place objections to this. I know it might be validly urged that most of the prosecutions have not taken place in Bengal under this Act. But pray do not forget the other aspect of the case. It is not always the punitive aspect of crime you have to take into consideration, but also how to prevent crime. The preventive aspect of legislation does a great deal more service than the merely punitive aspect, and as such I do seriously believe that the Act of 1908 has played a most conspicuous part in the execution of that service. Many of the conspiracies, many of the seditious movements have been nipped in the bud by the mere existence of this piece of legislation on the Statute-book; and whether it will be fair and right, whether it will be judicious action on the part of this Council to implement its approval on a measure of this sort at this time is a question which should give every Member of this House food for serious reflection. Sir, my Honourable friend has stated that our ordinary law is quite sufficient, because since the passing of this measure in 1908, two sections have been added to the Indian Penal Code, sections 120 and 121A and that those provisions are adequate to meet cases of the character which the Honourable the Home Member has described. I demur from that proposition. As a lawyer my friend the Honourable Mr. Karandikar knows better than anybody else that in cases of conspiracy you want tangible proof, you want substantial concrete evidence, to justify a conviction, and it is the difficulty of obtaining substantial concrete evidence that makes the task of Judges difficult, as he is perfectly aware. The provisions, the new provisions, of the Indian Penal Code are good in themselves; when a conspiracy is proved, or detected, and there is sufficient evidence, a particular case can be dealt with under those provisions; but in many cases it is not possible to bring the offenders within the scope of those provisions. My friend has also spoken with some feeling, with some vehemence, regarding the blot as he calls it on our Statute-book by the existence of legislation of this character. Sir, I am not a sentimentalist. I shall not be carried away and I know this Council

will not be carried away by shibboleths of this nature. They are all right to catch the vote in a public street, not in a body like this House, which is accustomed to deal with important questions, a body like this, with its culture and experience which is fully conversant with law, many of the Members being lawyers themselves. Then, Sir, it is a somewhat anomalous proposition to assert that a law, because it is of a repressive character, because it is intended to reach a certain class of offenders, is a stain on the Statute-book, or it is a stain on Government. All laws will excite controversy. All repressive laws are unpleasant. No repressive law will be received with favour by any section in the country. It is for this reason that I do not think it would be either just or proper to assert that the repressive laws are a stain on the Statute-book. We should rise above those petty considerations. The Council should not be guided by such sentimental consideration, should look and face the situation straight and deal with the baneful character of crime which unfortunately still largely exists in this country.

Sir, the justification for moving this Bill in this Council, the justification which its learned author had in introducing the Bill in the Assembly, was that it was founded on the recommendation of the Repressive Laws Committee. The Honourable the Home Member has dealt with that subject and I will not detain the House at length on that point. The Honourable the Home Member has quoted a passage from the report of the Repressive Laws Committee which makes it abundantly clear that no unconditional recommendation was made by that body. They did *not* make an unconditional recommendation that Part II, the remaining portion of the Act of 1908, should be repealed in the Delhi Session. There is one other passage which I shall quote from their report and it has been unfortunately overlooked both here and in the other House. It was distinctly stated in paragraph 26 of their report, and I shall read that sentence which is very significant:

“But it is impossible for us to make any definite recommendation on this point at present. We hope that the repeal of these Acts may be expedited by a healthy change in the character of the agitation going on at present. The duration of the retention rests in other hands than ours.”

No truer words were ever said.

“The duration of the retention rests in other hands than ours.”

It rests not in the hands of this Legislature, it rests in the hands of those unlawful associations and those leaders of the public who encourage either actively or indirectly those unlawful associations. The repeal of the Act is in the hands of a great many of our countrymen. No healthy change has yet taken place, as pointed out by the Repressive Laws Committee. That change has not been expedited yet. Nobody will be more pleased than I to see that change is brought about at an early date, and if I feel convinced hereafter that the political situation has improved in this country, I should be the first to give my support to the repeal of this measure. I feel, Sir, that we are bound to look after the interests of the large masses of the country. We are bound to protect the industrial classes and the great industrial works that are steadily and gradually rising in this country. I maintain that we are bound to see that peace and order prevail and every man is able to carry on his ordinary avocation without being harassed and troubled. It is the rightful liberty of an individual to live freely, unmolested by other people; it is that great liberty which is the main object of the law to promote; it is that great liberty which every individual is bound to

[Sir Maneckji Dadabhoy.]

maintain. It is that great liberty which my Honourable friend there has referred to, and if liberty of that character is maintained and does not degenerate into unbridled license, there will be no necessity for the maintenance of legislation of this character on the Statute-book. It is because I feel that a Statute of this character is urgently necessary in the interests of the industrial classes, it is because I feel that we are bound to protect our agriculturists and our big zemindars, it is because I feel that we should see that law and order are scrupulously maintained and the people are allowed to do their business without interference and molestation, that I do not wish to give my support to this Bill. Sir, I now give my full and cordial support to the measure of 1908 which is sought to be repealed by this Bill.

But before I sit down, I wish to refer to one important aspect of the case. I oppose this Bill *in toto*. But let me make one final appeal to Government in an important matter. Sir, when the Act of 1908 was framed all the powers under Part II were confined and were kept in the hands of the Governor General in Council. The Devolution Act (XXXVIII of 1920) has transferred all those powers to the hands of Provincial Governments. As it existed originally, there was a safeguard. That safeguard was that when a case was submitted by the Provincial Government the Government of India went through it and consulted their legal advisers and came to a decision. There was the concurrent judgment of two different administrative bodies, if I may say so, two sets of tribunals, the Provincial Government and the Government of India. That safeguard has now ceased to exist by the Devolution Rules. I hope that the *status quo ante* will be restored and the Government at a not distant date may see the advisability of making an alteration in the Act.

THE HONOURABLE THE PRESIDENT: The original question was:

"That the Bill to repeal certain provisions of the Indian Criminal Law Amendment Act, 1908, as passed by the Legislative Assembly, be taken into consideration."

Since which an amendment has been moved.

"That the Bill be referred to a Select Committee."

The question I have to put is:

"That the Bill be referred to a Select Committee."

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

"That the Bill, as passed by the Legislative Assembly, be taken into consideration."

THE HONOURABLE MR. YAMIN KHAN (United Provinces West: Muhammadan): I rise on a point of order, Sir. Before this question is put, there are some other speakers who would like to speak on the subject.

THE HONOURABLE THE PRESIDENT: Before I put this question I waited for Honourable Members to rise in their places. It is not possible for me to see inside Honourable Members' minds and to know that they want to speak if they remain in their seats. If the Honourable Member wants to speak and there are other Honourable Members who want to speak, then the Council must adjourn and resume discussion later, on the main motion.

THE HONOURABLE MR. YAMIN KHAN: I would like to speak on the motion, Sir, and I think there are other Honourable Members also who wish to speak on it.

The Council then adjourned for Lunch till Twenty-five Minutes to Three of the Clock.

The Council re-assembled after Lunch, at Twenty-five Minutes to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal Non-Muhammadan): Sir, more than ordinary responsibility rests on Members of this Council when measures passed by the other House are brought up here, either by the Government or any private member, certainly more responsibility than when we are initiating any measure, which unfortunately we rarely do. That responsibility becomes all the greater when the measure happens to have been passed by a large majority like 71 against 39 and when the division list shows that men of the character and standing of Mr. Abul Kasem, Sir Sivaswamy Aiyer, Dr. S. K. Datta, Mr. Jinnah, Mr. Neogy, Sir Purshotamdas Thakurdas, Mr. Ramachandra Rao and Mr. Rangachariar—to name only a few out of many—who are as keen in the interest of law and order as any that we know of, who are as staunchly devoted and loyal to the Crown and the Throne as any that we know of, voted for it.

This measure comes up, it is true, not on the direct and immediate recommendation of the Repressive Laws Committee's Report, but arising out of it. Extracts from that Report have been read and emphasis has been laid upon what the Committee said about the impossibility of their making at that particular juncture an immediate recommendation for the repeal of Part II of the Act that we are now considering. Sir Maneckji Dadabhoy did not, however, when reading that portion of the Report, read what preceded, and I shall do so with the leave of the Council:

“Our recommendation follows that made by the Bihar and Orissa Government (*and then that Government is quoted*)—subject, however, to the reservation temporarily made in favour of the Seditious Meetings Act and Part II of the Criminal Law Amendment Act, which cannot be abandoned until the present tension (*and I call the attention of Honourable Members to what follows*) created by the non-co-operation movement has been relieved by the action of its leading promoters. His Excellency in Council desires again to emphasise the importance of removing from the Statute-book as far as possible all special laws of this character, so that the Government of India under the reformed constitution may proceed with a clean slate. At the same time, however, His Excellency in Council is conscious that in the future the need for special powers may again arise.”

And in view of that appeal and that statement of the Bihar Government, the Committee thought that that was not a suitable occasion for recommending the immediate repeal of the Act. Well, that was, I believe, in 1922, and the appeal of the Bihar Government was before the Reforms. Since then matters have changed. They have improved, as has been admitted, in some directions; in other directions it has unfortunately been anything but improvement. If one is to wait for absolute and entire normal conditions throughout the country before the repeal of objectionable and unnecessary special Acts of this kind was to be undertaken, I am afraid it can never be done in the history of any extensive country like ours. Let us go back to what Lord Dalhousie said not very long ago:

“No prudent man would venture to predict a long continuance of peace in India. Insurrection may arise like an exhalation from the earth.”

[Dr. Sir Deva Prasad Sarvadhikary.]

If this is correct, special laws have to be normal laws of the country. If you want that, be frank about the matter and do not call them special laws. India is a continent, Sir, and exhalations may arise according to this dictum at any time—distressing exhalations about which one is not only not proud, but about which one has grave apprehensions. But to deal with these is a normal Government duty, for which constant special treatment should not be necessary nor permissible. Is that any reason why those that are admittedly special laws should, after a length of time like 1908 to 1925, not be abolished? One has a right to ask this question, especially in view of the modified recommendation of the Repressive Laws Committee which was merely endorsing a statement of the Government of Bihar and Orissa, which itself hoped for a clean slate and for the early abolition of special laws.

Sir, I share Sir Alexander Muddiman's regret that his appearance in our midst for the first time since he left the Chair, is to oppose a measure like this; but we are gratified to have his repeated testimony and assurance, as to how he himself disliked these special laws by tradition, by inclination and by mental habits, if I may add. We'll, that is for my purpose enough basis to ask him to consider whether the time has not come, even having regard to what he has stated, for the repeal of the second Part of this Act. Sir, Honourable Members will remember that on the eve of the reforms, as Mr Karandikar has reminded the House, this drastic special enactment had to be undertaken, and no one was more unhappy about it than Lord Minto himself, who said that he would insist upon every use being made of the ordinary law and discourage demands for exceptional procedure. As to whether the exceptional procedure should continue for seventeen years or not is a matter which this House has been invited to consider. A long catalogue of crimes has been quoted to us, largely by the Honourable Sir Maneckji Dadabhoy, and less by the Honourable the Home Member. But what do they signify in this particular matter and how do they help us?

THE HONOURABLE SIR ALEXANDER MUDDIMAN: I should like to explain one point. I did not repeat the lengthy list—I shall certainly do so at a later stage, if necessary—because I understood the House did not wish to listen to it.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Sir, I am not questioning the accuracy of that list; I am not questioning that these crimes unfortunately do exist and sully the good name and fame of my province and of other provinces; we do not feel proud about it; we do not feel happy about it; but there they are and we are miserable about it. As Lord Minto himself however on one occasion said, according to his biographer:

"As he looked around him he saw two currents of unrest, one of inevitable desire of men whom we (the British) had educated on western lines to share in the government, the other the dark stream of anarchy and rebellion which had its spring as much in Europe as in India; If both were suffered to overflow there might be a cataclysmic disaster; but the two were different in kind; and if the second was to be restrained there was the more need for canalising and regulating the first; otherwise the currents might join in tragic inundation. He was incapable of taking a melodramatic view and in reading anarchy into what was natural and reasonable. There was a type of unrest which might fairly be called 'loyal'. In Lord Minto's own words, he said that 'beneath a seemingly calm surface there existed a mass of smothered political discontent much of which was thoroughly justifiable and due to causes which we were bound to examine'. He desired to check the revolutionary by preventing his alliance with the moderate reformer."

That is exactly what we have often pressed Government to do and not mistake reasonable unrest for anarchy and not to drive the former into the arms of the latter.

Sir, when I was making the statement which necessitated the Honourable the Home Member interposing with a gratuitous promise to go further into the list of crimes, the point that I was trying to make was that, whatever other measures you might think it necessary to take,—and no sensible man, no law-abiding man, will deprecate any measures, however strong, which are needed for the upholding of law and order and securing freedom of people and peace in the country. . . .

THE HONOURABLE SIR MANECKJI DADABHOY: But a Bill has been brought into the Legislative Assembly to do away with all repressive laws.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: That may be, but let us not cloud the issues here; let us keep to the particular matter that we are considering. All that I was trying to establish was that in regard to crimes of the kind mentioned, the Act we are considering is inapplicable and was not applied. In fact it could not be applied.

I shall now, if time permits, examine in detail the provisions of the Act, that we are seeking to repeal in comparison with the sections of the Indian Penal Code that have been referred to and have not been fully dealt with. The point I was going to make was that on very few occasions in connection with these crimes that have been referred to have Government thought it fit or possible to invoke the assistance of Part II of the Act that you are dealing with? That is my point. And there were innate difficulties and objections to that Act being used for the purpose of meeting the situations that have been referred to in quoting that catalogue of crimes. They will have to be dealt with in other ways and by the normal laws of the country so far as possible. So far as Bengal is concerned, Sir, the whole matter is out of court because Bengal has now an Ordinance which gives much larger powers to the Local Government instead of the Imperial Government as before and in a manner that is not acceptable. As has been pointed out by the Honourable Sir Maneckji Dadabhoy, the Act we are considering also gives power to the Local Government and not the Imperial. That Ordinance is there, certified by His Excellency the Governor of Bengal in consequence of the Council failing to pass it. And lesser laws like that which we are considering have no function there. That is a portion of the controversy into which I shall not now go for obvious reasons and also because it is unnecessary for my present purpose. If Bengal incidents are to be made the reason for this Act, I say those reasons do not exist. They do not exist in connection with the crimes that have been referred to, and they do not exist in regard to other matters now that the Ordinance has taken the form of a Statute of the Province. That was a point I was going to make in referring to the catalogue of crimes, which reference for this purpose is not very pertinent.

Sir, I have referred to Lord Minto's feelings in the matter, and I shall give one or two more extracts to show what was at the back of the mind of that statesman, who gave us the first instalment of Reforms, for which

[Dr. Sir Deva Prasad Sarvadhikary.]

the country can never be too grateful to him and should cherish his memory. He was, according to his biographer :

"never enamoured of what had been done the previous winter (*passing of strong measures*) and he was always doubting their advisability, and he said :—'We may repress sedition ; we *will* repress it with a strong hand, but the restlessness of the new-born and advancing thought, we cannot repress. 'We must be prepared to lead it with help and guidance. We must seek for its cause'."

Well, we wish that to be done by the Government. We are waiting to see what the Reforms Committee will give us in the matter of help and guidance. In the meantime we want a "clean slate" in the works of the Bihar Government, so that the further measure of reforms that comes may have proper chances of working.

Sir, Lord Minto was so emphatic with regard to these things that another quotation from his speech may well be made. He said :

"I believe the situation to be better than it was 5 years ago. We must not allow the immediate dangers to blind us to the evidence of future promise. I believe that the broadening of political representation has saved India from far greater troubles than those we have now to face. I am convinced that the enlargement of our administrative machinery has enormously strengthened the hands of the Viceroy and the Government of India and has brought factors to our aid which would otherwise have had no sympathy with us. I believe above all that the fellow-services of British and Indian Administrators under a supreme British Government is the key to the future political happiness of this country."

Never were those words truer than they are to-day, especially on the eve of the second instalment of reforms, which we are confidently awaiting, and we appeal to those in authority not to mar the prospects in view. Unless therefore there be a very strong case, and honestly, Sir, I have failed to be convinced that there is a strong case of that magnitude so far as this Act is concerned, it is up to Government to help the people and the leaders, call them Moderates or Liberals or call them representatives of the loyal section, in trying to work smoothly what is coming as the second instalment of reforms. Sir, the reason why I do not attach the importance to this enactment with reference to what the Government has to do for upholding law and order has been indicated already. Government know at all events that on very few occasions in connection with these crimes they have not thought fit or possible to apply this law for the purpose of putting down crime or even preparations for crime and they have taken much larger powers. In 1913, for reasons that have not been challenged, Government added to the Penal Code two sections, 120-A and 120-B. If Honourable Members will please refer to these sections, as well as to sections 15 and 16 of Part II of the Act that we are considering, they will find that excepting as regards section 15 (b) of the latter Act it gives the Local Government now (it was the Imperial Government before) the power to declare an association to be unlawful. There is nothing in the Indian Penal Code, sections 120-A and 120-B, which would not abundantly meet the situation which these other sections are intended to cover.

Under the Penal Code as well as under this Act overt acts must be proved. There must be a prosecution; there must be the complete paraphernalia of the normal legal procedure before conviction under either set of sections can be secured. And the punishment is, in the case of convictions under this Act, limited to six months, whereas the punishment under the Penal Code is six months in normal cases, but may be much more in cases of abetment of crimes which carry greater punishment.

My submission to the Council, therefore, is, that, excepting the point of view of the Imperial Government or the Local Government, as the case may be, having unrestricted power to declare as unlawful an association, this Act has ceased to be at all necessary. It is a redundant piece of legislation, and a redundant piece of legislation ought not to be allowed to stand on the Statute-book, apart from its being what is called a "slur and a blot." I am free to confess that I am not interested so much in the slur and blot aspect of the question, if there is real necessity for the retention of the law.

I show, however, and I believe I show abundantly, that, excepting so far as power of the Government to declare associations illegal is concerned—sections 120-A and 120-B of the Penal Code are a part of our normal law, about which we have no quarrel,—there is absolutely no reason why this Act should continue to burden our Statute-book. That is a proposition that cannot be challenged.

Then, Sir, is left the question of the power of the Local Government to declare any association unlawful. Well, Sir, it goes against the first juridical principles that any Government should have this right of declaring as final without any right of appeal on the part of the accused or the suspected. A declaration like that may be good as an initial measure now and again in an emergency but is apt to be mischievous also if uncontrolled. We are aware of cases in which such mischief has been demonstrated. I shall not refer to a certain so-called volunteer movement in Calcutta which was sought to be regulated by this enactment, and quite unsuccessfully. But one case I may refer to, the case of an institution in the district of my friend Mr. Karandikar—a Poona institution which while Sir Mahadeo Chaubal was its executive member was declared as unlawful under this section. It is an institution which to-day claims.....

THE HONOURABLE MR. J. CRERAR (Home Secretary): May I ask in what year that declaration was made?

THE HONOURABLE MR. R. P. KARANDIKAR: In 1910.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Well, be it in 1910. Things move fast or slow as the case may be, but I am giving an instance in which the sagacity of the Government or the information of those that bring them information was at fault; such information cannot always be counted upon. I do not refer to the volunteer movement in Bengal, because that is now covered by other enactments and it will serve no useful purpose to refer to those matters now. But where a Local Government, devoid of the safeguards likely to be afforded by the Imperial Government, is authorised to exercise powers like this without any sort of appeal, the position becomes very difficult indeed and it is impossible to continue to support any law that unless an unmistakably strong case can be made out would have that effect.

Reference has been made to what Sir Chimanlal Setalvad said elsewhere. He was I believe the Law Member in one of the Provincial Governments at one time; he is a practitioner of great eminence and a lawyer of unquestioned soundness. He indicated in that speech of his in the other place that if there was a right of appeal even if the Government were allowed to take the initiative in an emergency, one could have understood the necessity of allowing such a law to be continued; but in the absence of those safeguards it is impossible to support it unless there is a very strong and clear case, which I believe is wanting on this occasion.

[Dr. Sir Deva Prasad Sarvadhikary.]

Reference has been made to the fairly clean slate from 1911 to I believe 1922, when the Bengal cases and the Burma case referred to occurred. The reference to the Burma case is very peculiar. It took place after the Assembly had enacted this piece of legislation, and if immediately thereafter this House had been invited to give its sanction to that Bill this question would not have arisen. What happens and must happen in these cases is that if there is such a power, an easy authority handy, which will be useful and nobody says that these powers may not sometimes be useful, the tendency is to use those powers instead of adopting normal and arduous proceedings that would be involved by invoking sections like 120A. Well, every juridical mind and every legislative assembly has always deprecated the use of exceptional and special powers unless there be a strong case for it, and exercise of such powers has always been limited to the time being. If after 17 years it is not possible for us to do without that which the Government of the day and those who assisted in the passing of that measure looked upon as purely temporary—and my Honourable friend Sir Maneckji Dadabhoy, was one of those who appealed for limiting the powers under that section—well, if Government after 17 years still require exceptional powers like these, it is time frankly to make them part of the normal law of the country. I could have understood that position but I cannot understand prolonged retention of special laws, particularly an unnecessary piece of law like this—unnecessary in most vital and important respects as I have shown.

Sir, the Honourable the Home Member has not made much of the rejection of the present Bill in July 1923. Of course it was a different Assembly. Another Assembly gave judgment in favour of repeal possibly on better materials and the mover for repeal got a very strong judgment in his favour. Except for very strong and cogent reasons, except for an exceptionally strong case, which has not been made out more than in the other House, this House should endorse what has been done there, this House should be party to no arrangements by which heavy artillery and Gatling guns have to be brought into action every time in the every-day work of administration for which the ordinary law dealing with even the worst form of crime should suffice.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, in opposing this motion I should like to acknowledge the moderation and the sobriety which characterised the speeches of the Honourable the Mover and of the Honourable and learned gentleman who preceded me. Indeed from the vein of airy and graceful compliment in which the Honourable Mover began his motion it would have been difficult to infer that he was conscious that he was embarking upon the formidable enterprise of impairing the power of the criminal law and of endangering the security of the country. Both the Honourable gentlemen relied almost entirely in the course of their arguments on what I may call purely theoretical considerations. It has already been admitted, and admitted in the frankest terms, that the specific power given to the Executive by this Act is undoubtedly a grave power to commit to them. That is frankly admitted, but that admission hardly warrants the Honourable gentlemen who have supported this motion in proceeding on the assumption that considerations of a juridical character must completely and entirely condemn the maintenance of this power. To anyone who has examined as a comprehensive whole the criminal law of any country whatsoever, it will become evident that the executive is entrusted with discretionary powers of a very comprehensive character. The Honourable and learned

gentleman from Nagpur pointed out the elementary fact that all criminal law is in a certain sense repressive law; but beyond that every code of criminal law necessarily gives the Executive certain preventive powers. The power granted by the Act now under our consideration is really analogous and complementary to the other preventive powers which are granted to the Executive Government and to the officers subordinate to them for preventive purposes. That however is not a point on which I propose to weary the House. I think that dealing with an important legislative enactment of this kind we should do well to appeal to that reasonable attitude, that reasonable attitude of common sense which is so distrustful of purely theoretical considerations and which requires a discussion of this character to be brought into the closest relation with facts. Now, Sir, I intend to make a few remarks to endeavour to bring this discussion more closely into relation with facts. I must as a preliminary demur very strongly to the doctrine expounded by the Honourable and learned gentleman opposite, who gave us to understand that because deliberations in another place had resulted in a certain division, we were not at liberty to exercise our own judgment on the matter on its merits.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: I did not say that. I claimed more sense of responsibility than when initiating a measure.

THE HONOURABLE MR. J. CRERAR: The Honourable gentleman did not perhaps in so many words say so but it was the inevitable consequence of his argument. I demur to his arguments not to his general proposition. It is true that we have a great responsibility in this matter, but our greatest responsibility is that we are a revising chamber.

Now, Sir, one objection which was taken *prima facie* was an objection of some substance—it was implied rather than taken, but it was nevertheless inherent in the substance of the Honourable Member's argument—and it was this, that the powers granted by the Criminal Law Amendment Act, 1908, were granted with a specific object, that the Act contemplated primarily and exclusively the suppression, the punishment *ex post facti*, of anarchical crime in Bengal. Now, Sir, I take strong exception to that statement. Even supposing it were true that the Legislature at that time legislated more wisely than it knew and made provisions applicable to conditions different from but equally dangerous, with those at the time particularly contemplated, I do not think that we should be wise in regarding ourselves as precluded from taking advantage of the wisdom and the foresight of our predecessors. That, I think, is a fair reply to that argument. It is as a matter of fact unnecessary for me to rely upon it. It was intimated by my Honourable and learned friend from Nagpur—and we could not have a better authority on the matter—that when this measure was under consideration, the framers of that legislation did not take that narrow and restricted view of what they were proposing to do. I can entirely confirm the impression of my Honourable friend Sir Maneckji Dadabhoy on that point. I will make a brief quotation from the speech of the Honourable Sir Harvey Adamson in moving the motion. After dealing in some detail with anarchical crime proper in Bengal, he proceeded as follows:

“Associations, known as Samitis, and consisting of what are called volunteers were formed in 1902, but they did not come much into evidence till 1910. They have developed with the most surprising rapidity, almost all districts in East Bengal have their volunteer organisations. Outwardly professing to be devoted to such laudable objects as keeping order at meetings and helping pilgrims at festivals, they have been largely used for the forcible boycott of foreign goods and for terrorising the community.”

[Mr. J. Crerar.]

Now, Sir, if Honourable Members recollect the events of 1921-22, when volunteer organisations again came into prominence they will be struck by the remarkable appositeness of the words used by Sir Harvey Adamson. Precisely those conditions which he then said the Government had under contemplation as among the dangers against which it was necessary to take adequate safeguards were reproduced with the most extraordinary accuracy. On that aspect of the case this is, I submit, conclusive.

I will now go very briefly to another. The gravamen of the objection to section 15 (b) of this Act is that it is liable to abuse. Now, the Honourable Members who support this Bill would be in a very much stronger position if they were able to give any single instance of the abuse of those powers. The Honourable Mover, as a matter of fact, did not allege any single instance of abuse. (*The Honourable Mr. R. P. Karandikar*: "None occurred.") I understood the Honourable Member opposite to instance as a case of the abuse of this Act the declaration by the Government of Bombay of Samarth Vidyalaya as an unlawful association. What are the facts? An institution nominally educational, but one of whose real objects was to inculcate into its pupils sedition and doctrines of revolutionary violence, was declared an unlawful association by the Government of Bombay in 1910. Ten years later another institution of the same name but with very different objects was projected, and received the patronage of Sir M. Chaubal, a former member of the Executive Council of the Governor of Bombay. So far from proscribing this institution, the Government of Bombay were willing, provided that its governing body and curriculum were placed on an approved basis, to give it their countenance. That, Sir, is the only single abuse of the Act which has so far been brought before us, and I think I have shown to the House that the contention is entirely baseless. What were, then, the main features of the circumstances in which this Act was put into force in recent years? It was put into force during the years 1921 and 1922 for the most part in Bengal and in the United Provinces. Perhaps I may be permitted to quote to the House a very brief summary of some of the circumstances which induced the United Provinces Government to have recourse to this Act. Early in November 1922, shortly before the landing of the Prince of Wales in Bombay, a date of unhappy memory, the formation of these associations began on a very large scale in the United Provinces:

"There were illegal activities of the volunteer associations which had been engaged in a systematic campaign of violence, intimidation and obstruction. In the United Provinces these volunteer associations had had a somewhat irregular and uncontrolled growth. Their members had been used to provide escorts for extremist leaders, to keep order at political meetings, to enforce *hartals* and to assist the temperance and *swadeshi* campaigns by picketing shops. Several districts had reported the drilling of volunteers from time to time and many of the associations were in possession of semi-military uniforms, swords and spears which they carried on ceremonial occasions. In Saharanpore it had been found necessary to withdraw exemptions under the Arms Act in consequence of the danger involved by military displays in inflammable centres. In places also volunteers had tried to usurp the functions of the police, whose place they were intended to fill if ever a parallel administration were set up. In the Aligarh riots, already described, a Khilafat volunteer was reported to have led the mob and in September a bodyguard of Khilafat volunteers armed with spears had tried to prevent the arrest of a prominent agitator. There were at this time about 5,000 Khilafat volunteers and 11,000 Congress volunteers in the United Provinces."

I will not weary the House with details. I will merely mention that in the course of a few months the number of enrolled volunteers in that province alone amounted to 110,000. After serious scenes of violence in which murder was committed and on several occasions the police had to

fire and which were mainly due to the activities of these so-called volunteers, the whole movement culminated in two very tragic incidents. One was the incident at Chauri Chaura. In case Honourable Members have forgotten the details of that unhappy affair I will very briefly recite them :

“ On the 4th of February a mob of some three or four thousand men headed by several hundred volunteers marched about two miles to the police station of Chauri Chaura in the Gorakhpur district. It reached the police station in a state of high excitement and after an altercation with the police, the incidents of which it is unnecessary to detail and an attempt by the police to disperse a portion of the mob, a massed attack was made on the police, in the course of which the police station was burnt down and 23 policemen beaten to death with savage cruelty. When all was over the members of the crowd dispersed to their homes in a spirit of exultation, boasting of their achievements with which they coupled the name of Mr. Gandhi whom they had invoked from the outset.”

On the following day an affair which might have been of equal gravity occurred at Rai Bareilly, but on this occasion the police were able to hold their own. These are the two culminating incidents of that lamentable history. I venture to say that none of the Honourable Members who have supported this motion can allege that the action taken by the Government of the United Provinces was anything but the minimum required from any Government which had not abdicated its authority and its responsibilities. Very similar were the circumstances which led to the application of the Act in Bengal. As for the circumstances which led to the application of the Act later in the Punjab, it is not my present purpose to say much. Conditions there are happily now very much improved, and I am unwilling to say anything which might recall unhappy memories and possibly prejudice the movements which are now well on foot towards a happier state of affairs. I will only say this that it was not till late in the year 1923 when the Shiromani Gurdwara Prabhandak Committee had incited organised bands to invade the territory of Nabha that the Government of the Punjab, after a long period of extreme patience and forbearance, felt themselves under the necessity of invoking the provisions of this Act. If I were to mention one more instance of the gravity of the dangers which this Act enables Government to some extent at least to control, I would mention the tragic incidents at Malegaon. On that occasion, as the result of the arrest of a certain number of volunteers who had violated the order of the District Magistrate forbidding them to carry *lathis* in public, the House will remember that a Hindu temple was burnt and that 4 policemen who had taken refuge in the police station were brutally massacred in the streets. It was judicially proved that the volunteer association was the proximate cause of the outbreak. It is necessary for me, Sir, to dwell more on these lamentable series of tragedies in order to prove the two points which I wish to make. Firstly, in no single instance has it been shown that the power of declaring a lawful association to be unlawful has been abused by any Local Government in the period to which I am referring. In the second place, I would ask the House to remember that, if you want to enable the Local Governments to avert tragedies of this character and not merely to punish the offenders, you must hesitate before you deprive them of this power. This is really the most important issue in the case. The amendments of the Indian Penal Code, to which my Honourable friend has referred, are not provisions which enable you to take precautionary measures. It is essential that Government should be equipped to prevent as well as to punish. This Act enables them very frequently by the timely use of such powers to avoid the use of much more drastic powers.

[Mr. J. Crerar.]

I do not intend to detain the House any longer; but as the two Honourable Members who have supported this motion have argued on legal grounds, I would venture to remind them of one legal maxim which is "*cessante ratione, cessa ipsa lex*." This is stated in a negative form but it has obviously a positive converse proposition implicit in it. So long as the necessity for a law continues the law ought to continue.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-official): Sir, this is a very serious matter and should be discussed from the practical standpoint. I have given it my most careful consideration and I ask the House to believe me when I say that this is not the first time that I have been called upon to consider Part II of the Criminal Law Amendment Act. In 1921 I had the honour of being summoned by the Government of India as Secretary of the Madras Liberal League—the President of which was Sir Sivaswamy Aiyer, who I find has taken part in the division on this subject in another place, and I then gave evidence that this law should be repealed. It so happened two years later that the National Liberal Federation held at Allahabad had to give this matter its most serious consideration, and we came to the conclusion that this was a temptation in the hands of certain officials and the use of which had to some extent aggravated the political difficulties with which the Government had been confronted in those days. After listening to the debate here if the Honourable Mr. Crerar will permit me to join with him in saying so—in which the case for and against has been put so fairly,—there is no use ignoring the obvious facts. I am willing to confess since this Bill was debated in another place that a very serious set of facts has been placed before us; and with all due deference to people who make any statement to the contrary, there is no doubt that an anarchist conspiracy does exist in Bengal; there is no doubt it has been met and there is no doubt that Government's powers are ample. I have stated it not once, not here alone, not only in speech, but also in other places where I have written, that if the ordinary law is not enough—and I can understand the position that it is not—some other powers ought to be given. The whole question now resolves itself into this, and I think the Honourable the Home Member stated it very fairly that clause (b) of Part II of this Act is the gravamen of the charge; and it is on that and after considering that and with a full sense of responsibility that many people of the party to which I have the honour to belong and under whom I have worked thought it fit to advise Government that it is desirable that this Part II ought to go. I can quite understand the absolute necessity which any Government might have, and which as a private employer I should like to arm myself with, for powers which are not conferred by the Act and afterwards justify the use of the powers in an emergency; but the whole question is this: if you declare an association unlawful, and if, as it is but fair to concede and as Honourable Members have conceded, there might be a case in which the head of a district or even the head of a province might unfortunately come to the conclusion that a certain association which might prove itself very inconvenient, very embarrassing to Government, and not only to Government but to private individuals also, ought to come under this law even granting that they are embarrassing and inconvenient, will you be justified in bringing them under the operation of a law which really was not intended for that purpose?

THE HONOURABLE SIR MANECKJI DADABHOY: Is there no miscarriage of justice in cases where the ordinary law is applied?

THE HONOURABLE MR. G. A. NATESAN: My Honourable friend, Sir Maneckji Dadabhoy will pardon me; but if there is a miscarriage of justice in such cases there is a court to which there is an appeal; but in a case where an unfortunate young man or group of young men are believed to be in an unlawful association, which might even be lawful, and they are brought under the operation of this law, you do not even give those young men an opportunity to clear their character before a court of law; and does my Honourable friend think that that is anything but a miscarriage of justice? If some boys were to be inveigled into an association which might be politically unlawful and which might even have a sinister purpose, these young men are not even given an opportunity to prove their innocence. If the House will permit me to sound a personal note, I had the honour of very close and intimate personal friendship with Lord Carmichael when he was Governor of Madras; and when he was Governor of Bengal I had the honour of calling on him, and then I asked him how it was that such a tactful ruler as he was had made use of these provisions and interned people. He said he had found the situation very difficult and he also admitted this, that it was intensely distressing to find cases of young men who had been inveigled as it were by other people and who, on the evidence being very carefully gone into, afterwards had to be discharged on the recommendation of people. It so happened in one case that a man belonging to an anarchist conspiracy had simply asked a boy, a friend of his, a very innocent chap, on a certain evening to take a little bundle at a certain hour in the evening, and bring it back again to a particular place the next day. Now it was clear that the man who had asked this boy to take the bundle or bring it the next day had really a sinister purpose, but this unfortunate boy was caught by the police and interned; and a personal representation was made to His Excellency Lord Carmichael and on the assurance that this boy was really innocent he was afterwards released. I am only giving a case, where powers are given to the police, of people who are sometimes arrested on insufficient information and on inaccurate data. All people are liable to err; we are liable to err and Governments are liable to err; and it is proper therefore that some opportunity should be given to vindicate character. I find that an appeal was made at that time to the Government by such a strong and loyal supporter of Government as Sir Chimanlal Setalvad and I happened to be present in the gallery at the time—whether they would not even consider the question of giving a right of appeal to the individual. That opportunity was even denied; and when I find that such eminent leaders of the party to which I belong, men like Sir Sivaswamy Aiyer and Sir Chimanlal Setalvad and others whose names have been mentioned here, have thought fit to vote for this proposition, I feel I shall not be discharging my duty properly here if I did not vote for it.

There is one observation which I wish to make. I think undue stress has been laid upon what we are doing. What is really happening? In another place a certain set of people by a majority have thought fit to recommend to Government that this provision in Part II of the Criminal Law Amendment Act ought to go. What are we doing here? Those of us here who are of that opinion are making this recommendation to Government that in our opinion this law ought to go. The ultimate responsibility is for the Government. Some Members—it may be a very small number—are stating it from their experience and knowledge of the political conditions of our country that they are of opinion that this particular part of the Act might safely go. It must also be remembered that the Repressive Laws Committee while certainly they did not state that it ought to be repealed

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also said that they looked forward to the time when a healthy change in the atmosphere of the country would take place; and whatever may be the difficulties with regard to Bengal—and I may say with regard to Bengal that you have already got the Regulations about deportation and the Bengal Ordinance—you have quite enough powers to meet the situation before you there. The task of a wise Government should be to heal wounds which have been at least regarded by the people as wounds; and I do not think anything should be done to ulcerate wounds which ought to be healed. I think that if this clause is repealed and if Government think it is their duty to accede to the wishes of the Legislature, if they did it, no serious harm will be done. I feel convinced too, that while I am feeling the necessity for supporting Government in all measures for law and order, that the passing of this proposition will not in the least deprive Government of a weapon which any reasonable Government ought to have. I think Government have plenty of powers; I do not pretend to be a lawyer, but if I read the debates aright, it has been pointed out by more than one lawyer who is eminently loyal and belongs to the party to which I have the honour to belong, namely, the Liberal or Moderate Party, that the Conspiracy Act and the other sections of the Penal Code are enough for Government to meet any contingency. I may also state at once that I am not at all oblivious of the facts—I will not dispute the facts that have been given by many Members here and by the Honourable the Home Secretary. I am willing to say publicly that I have myself been the victim at the hands of a party of people who prevented me from paying my respects to His Royal Highness the Prince of Wales. I took a great risk, but these are inconveniences which I think some people have to undergo. If this law were really intended to put down anarchist conspiracy and to bring these people to judgment swiftly and surely, I should undoubtedly give it my best support; but after weighing the pros and cons of the question, having regard to the view that I took in 1921 and to the debates in which I have been an active participator in the councils of the Liberal Party to which I belong and to the fact that such people as Sir Sivaswamy Aiyer and Sir Chimanlal Setalvad and others have thought it desirable to advise Government that this clause ought to go, I feel I have no alternative but to support this Bill.

THE HONOURABLE SARDAR CHARANJIT SINGH (Punjab: Nominated Non-Official): Sir, the speech of the Honourable the Home Member was so exhaustive that I did not think any further arguments were required to convince this House that the time has not come to repeal the Criminal Law Amendment Act. The speeches which have been made in favour of the motion have not, I submit, controverted any one of the points which have been so clearly made out by the Honourable Sir Alexander Muddiman. The original Mover of this Bill in the other place puts down in his Statement of Objects and Reasons that the repeal of this part was to be expedited with the change in the political situation. Now, the only point to determine is whether there is any change for the better. The Honourable Mr. Karandikar himself said that things were quieter some years ago; in other words, he admits that the atmosphere is not so peaceful now as it was a few years ago. The "catalogue" of crimes which the Honourable Sir Maneckji Dadabhoj has read to this House merely proves that the situation if anything is worse at least in some parts of India. This view seems to be shared by many public men. I strongly oppose this motion.

THE HONOURABLE NAWAB SIR AMIRUDDEEN AHMAD (Punjab: Nominated Non-Official): Sir, I beg to say that I cannot support the motion on the ground that the Bill to repeal certain provisions of the Criminal Law Amendment Act of 1908, has been passed by the other House on the uncertain belief that there has been a change in the political situation of the country. Since 1908, there have been changes, and it is due to the forbearance, sagacity, and firmness of the present Viceroy that the situation looks as if changed, but it is not totally peaceful. We may be hopeful for the normal situation in the near future, but, unless that near future is reached, where is the advisability of disarming the executive to the point of helplessness in times of emergency? The necessity of enforcing the Bengal Ordinance is a clear proof of no change in the situation, and the "Akali" movement in the Punjab is another proof of the presence of dangerous elements.

All enactments on the point are so many weapons for maintaining the peace of the country and at a time when the elimination of sedition and agitation is not assured those weapons should be left intact. To my mind it appears that the good government of a country and the surety of safe life to a peaceful citizen rests to a very large extent on a good executive having complete powers to deal competently and effectively with various difficult situations as they arise.

THE HONOURABLE RAJA SIR RAMPAL SINGH (United Provinces Central: Non-Muhammadan): Sir, I do not wish to add much to this debate. In fact when I entered the House I had no mind to take part in the debate at all, because I was in a fix whether I should support the motion of my Honourable friend Mr. Karandikar or oppose it. I am not a lawyer who can bring to bear the high principles of jurisprudence and their knowledge upon the decision of this question. I can apply common sense, but after reading all the literature on the subject I began to waver as to whether one side who were supporting the measure or the opposite side were right. But having heard the speeches made in this House, I am definitely of opinion now that the motion of my Honourable friend Mr. Karandikar should not be accepted. Those who have had experience of 1922 and who had witnessed the great terrorism and the atrocities committed by certain persons would very readily agree that the Government should have certain powers in order to protect the peaceful people who might be harassed under those circumstances. Sir, although we have hedged and circumscribed the powers and the discretion even of the judicial courts, we have given certain powers which they do exercise, but with all the restrictions and with all the law that exists, I can say that it is not always the case that they administer real justice. Sometimes they do fail simply because the material that comes before them is not sufficient, or is not of the kind which can lead them to administer real justice. In the same way it is quite possible that sometimes the executive Government may commit mistakes. Well, Sir, it can be urged that in judicial decisions, appeals lie to higher courts. In my opinion the decisions of the executive are also very much scrutinised by the public. Government have some fear that if they act wrongly, if they apply any Act wrongly, public opinion will go against them, and that will be a cause of unpopularity. As far as my knowledge goes, this Criminal Law Amendment Act was never misused or abused, at least so far as I know of my own Province: I can say that it was very rightly applied there, and had it not been applied there, there would have been very great

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trouble. Sir, I am very strongly of opinion that our progress towards the goal of Swaraj should be peaceful and should not be brought about by creating disturbances and causing anarchy in the country. My friend the Honourable Sir Maneckji Dadabhoy has referred to the fact that this Act was passed for the purpose of suppressing anarchical crimes, and it was not meant for political associations. But when political associations degenerate into anarchical associations, I think the Act ought to be applied in order to suppress such associations. My friends who support the motion have very great solicitude for the members of certain associations, but I would appeal to them that they ought to have sympathy with the people who are not members of these associations and who have to bear trouble and to face all sorts of atrocities at the hands of those whose object is something else than the welfare of the country.

THE HONOURABLE MR. YAMIN KHAN (United Provinces West: Muhammadan): Sir, to my mind as a lawyer this Act XIV of 1908 is very prejudicial to the public interests, because as a lawyer I do not like the powers of the judiciary to be transferred to the executive, and the giving of so many powers to the executive as this Act gives will never be liked by anybody who has got anything to do with law. At the same time, Sir, to my mind as a citizen it creates great awe that such powers, if misused by the executive, might be applied against associations against whom this Act has never been meant to be applied. To my mind as a legislator this Act seems to be not a good law because it is a bad law. It is ambiguously worded; it gives power to the executive which the Legislature probably never meant to give. But, Sir, at the same time as a representative of a constituency which has got responsible people, I think this measure is absolutely necessary to be kept on for some time. Sir, it has been rightly pointed out by the Honourable the Home Member that sub-section (2) of clause (b) of section 15 is a clause which is so ambiguous and gives so many powers which are open to great objection. At the same time I may point out to the Honourable the Home Member that it is not only sub-clause (b) which is objectionable but also section 16 where it goes on to say that if the Local Government is of opinion that any association, etc. "Is of opinion"; the words are such that the Local Government may form any kind of opinion about any association whatsoever. We must have cut and dried powers given to the Executive to be applied under certain circumstances and it must not only be left to them to form an opinion without any guidance. That is undoubtedly the law. This law is one which is open to great objection; but the point is absolutely a different one to what we have to consider—whether this Part II of the Act of 1908 should be repealed altogether or not. That is the only motion before us. We are not dealing with the question whether there should be an amendment of this law. What the Honourable Mover in the other House ought to have done, the proper course for him to have taken, which would have found greater support both in this House as well as in the other House, would have been to bring about an amendment of this Act, and I think this House and probably the other House as well might have accepted the amendment in that form, which would have removed the objectionable portion of this Act. But we are not dealing with any amendment just now; we are dealing with the question whether associations which are unlawful associations should be made punishable and whether this law should remain on the Statute-book

or not. I am not going to detain the House with a long history of the cases although I do not agree with the long catalogue which has been referred to by my Honourable friend Sir Maneckji Dadabhoy because most of the cases to which he referred were not dealt with under this Act (*The Honourable Sir Maneckji Dadabhoy*: "Nobody said they were".) So when we are discussing the present Act they are absolutely irrelevant to my mind. But I quite agree with the remarks which have been made by my Honourable friend Raja Sir Rampal Singh. It was rightly pointed out by the Honourable Mr. Crerar and I am myself aware of it that in one Province, the United Provinces of Agra and Oudh, in 1921, Sir Harcourt Butler was very reluctant to use any special law in repressing the different acts of aggression by different associations. As a wise ruler he did not like at that time, just on the eve of the Reforms, those were the words he himself used, to use any special law which might take away from the popularity of the Reforms; but Sir he was obliged to. The man who always dealt with people by tact and invited the co-operation of people by calling influential people round him and taking their help—even he was obliged to have recourse to this law. I do not agree with my Honourable friend Mr. Natesan when he said that the whole of the Liberal Party was opposed to this Act and that they wanted the repeal of this Act.

THE HONOURABLE MR. G. A. NATESAN: Sir, I never said so. I said the National Liberal Federation passed resolutions disapproving of this Act.

THE HONOURABLE MR. YAMIN KHAN: I know, Sir, that in the United Provinces Government had recourse to this Act after consulting the Minister or Ministers. My Honourable friend knows who were the Ministers at that time—Mr. Chintamani and Pandit Jagat Narayan, who were the leaders of that party and who were prominent members of that party. Mr. Chintamani in 1920 presided over the Liberal Conference before he became Minister and he had the full confidence of the Liberal Party, and it was with his full support that Sir Harcourt Butler made use of this law in the United Provinces. The other Minister Pandit Jagat Narayan is also a well known lawyer in the United Provinces, and the Honourable Member knows very well that he also gave his full consent to having recourse to this law. Of course we cannot shut our eyes to what was actually happening in 1921 and 1922. I will refer to a single instance which occurred here in Delhi when a prominent gentleman died and his corpse was taken to the burial ground but was sent back by the volunteers of a certain association. They would not allow him to be buried in the public ground. Well many instances could be cited where insults were offered not only to the living but even to the dead. Then what else could be done except to use this law and this power which was the only weapon in the hands of the Executive? The ordinary law was not sufficient to deal with situations created by such kinds of political activities of these associations. It has been quite rightly pointed out by the Honourable Mr. Crerar that at the time of His Royal Highness the Prince of Wales' visit to this country, we found all of a sudden groups of men mostly *ex*-convicts coming in the name of non-co-operation telling responsible people, threatening them not to go and not to give a welcome to His Royal Highness the Heir to the Throne. That was the condition. If you remove this kind of law, peaceful citizens who want to perform their peaceful duties are intimidated, are threatened by people of this type, who come in the name of non-co-operation, while not possessing the slightest notion of what non-co-operation is. The people who posed to be the

[Mr. Yamin Khan.]

followers of Mahatma Gandhi have not the slightest touch of his high ideals. People who said that they were not violent had been absolutely nothing but violent in their actions. This was the condition which was prevailing in 1921 and in most parts of India in 1922. This was the reason really which guided the last Legislative Assembly to let this remain on the Statute-book. I was myself a member of that House, Sir, at that time, In 1923 when this measure came before the Legislative Assembly, the majority of the Members realised at that time that the situation in the country was such as did not warrant the taking away of the powers from the executive to deal with the situation created by the agitators. Now, Sir, some Honourable Members have said that the situation has not changed. Well, I doubt that; the situation has changed; the situation has improved and I am glad to say for the better, not for the worse—just as was pointed out by my Honourable and respected friend, Nawab Sir Amiruddeen Ahmad Khan—by the wise and prompt action of His Excellency the Governor General and of the heads of the Local Governments.

Now, Sir, one point which might be urged against this law is that it may be abused and of course it might be rightly urged against this, because there have been certain instances when it had been misused. When we were discussing the question last time in the Assembly, just in the beginning of 1922, we knew that people who were fit to adorn the treasury benches were arrested under this Act; we were aware, Sir, at that time that Pandit Motilal Nehru had been arrested; we knew, Sir, that several other prominent persons had been arrested—some persons although they are non-co-operators and I never agreed with them in their political views, but for whom I have got great respect. They are very good people whatever their political ideas may be. They suffered under this Act, when they should not have suffered as they did. That is what always happens; when the executive finds that they have to bring about peace and order, with 100 bad people 2 or 3 good people also have to suffer, through certain mistakes, through their own fault, through the fault of the officer who has to act promptly and at once without having the slightest time to think about the matter. That, Sir, is natural; that will always happen everywhere, in every country; and I would even say that in most of the instances it was through the actions of Indians and Indian officers that there was ground for complaint; the blame will be thrown only on Indians. This Act has got a safeguard now. In 1908 whatever there may have been against this Act, the constitution of Local Governments is immensely changed now. There is no Local Government to whom this power is given under this Act, which has not got an Indian Member as an Executive Councillor. If the Governor acts constitutionally and wants to have his power strengthened, then he usually consults his Ministers as well; and Ministers who are representatives of the people, who come as elected Members to the Council know the feelings of the country; they know the whole situation; when they speak, they speak on behalf of the majority of the Council, that means, the majority of the province, the people of the province. Under those circumstances, there is ample safeguard under this Act, and there is not so much fear, unless my friend the Mover says that the Executive Councillors of the Local Governments are such persons in whom he or the country puts no faith at all. But he cannot say such a thing about the Ministers. Generally the members of a Government are really responsible persons, who have to see to the responsibility which is put on their shoulders. They have not only to see the popular side, . . .

THE HONOURABLE SIR MANECKJI DADABHOY: Is my Honourable friend arguing on the Bill, Sir, or on other matters which have no apparent connection with this question?

THE HONOURABLE THE PRESIDENT: The Honourable Member seems to be arguing on the lines which the debate has followed all day.

THE HONOURABLE MR. YAMIN KHAN: The members of the Government realise that they are responsible for keeping peace and order, not the representatives of the people who have got no responsibility; they are only to voice the feelings of their constituency. In these circumstances, Sir, having regard to the safeguard in the law, and realising this that the situation has not totally—I use the word totally—changed, though it has changed for the better, it is necessary that a special measure must remain for a certain period in the hands of the executive, although I would much desire that it should merely be in an amended form.

Now, Sir, under these circumstances I would suggest to my Honourable friend the Mover to withdraw his motion and advise the Member in the other House to bring in an amendment of the Act if he so desires. I may further suggest that as the Honourable the Home Member has himself pointed out that he also realises that certain provisions in Part II of this Act are open to objection, he may bring about legislation to that effect himself on his own motion if he likes. His Excellency the Governor General in his opening speech to the Legislature said that it was absolutely essential for the maintenance of law and order that he had to introduce an Ordinance in Bengal. So, although in other provinces the situation has changed, there are certain provinces where it is still necessary to have special laws. This shows that the country as a whole has not totally changed. Of course, it would have been much better for my Honourable friend the Mover to have left this measure as passed by the Legislative Assembly to be considered by the next Council of State and to have kept quiet for another year to see whether the situation still changes next year or not. With these few words, Sir, I make my speech.

THE HONOURABLE RAJA PRAMADA NATH RAY OF DIGHIPATIA (East Bengal: Non-Muhammadan): Sir, I beg to support this motion not because I am in any way opposed to the suppression of unlawful associations, but because the method of declaring an association unlawful is so undesirable; as there is no appeal against such an order I am afraid I cannot but support this motion. If the Government could find some way to amend this portion of the Act, I believe no one will be eager for the repeal of this Act but would completely support it. I am as anxious to suppress the unlawful associations as anybody else here. But as long as the present method of declaring associations unlawful remains, it is difficult to give my support to this Act as an elected representative of the people, whatever my personal inclinations in this matter may be. Just now we heard from the Honourable the Home Secretary that only one occasion arose where an association was declared unlawful that should not have been so declared. It only shows that mistakes do take place.

THE HONOURABLE MR. J. CRERAR: On a personal explanation, Sir, I said the only instance produced in this House was an instance in which the contention was not justified.

THE HONOURABLE RAJA PRAMADA NATH RAY: I am sorry I did not hear the Home Secretary properly. So I will not say anything about it. Even if there had not been a single case, where such associations were declared unlawful which should not have been declared as such, I should say that the law is rather autocratic and at least the power of appeal should be given to these associations, so that the whole matter may be threshed out in a court of law. However, that is another matter. As for Bengal, I do not think this Act would be at all necessary for that province at the present moment, as we have got such fine Acts as the Bengal Ordinance and Regulation III of 1818 in force there. With these few remarks, I beg to support this Bill.

THE HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-Official): Sir, I shall be very brief. The Honourable Sir Deva Prasad Sarvadhikary has referred to the responsibilities of this House as far as this question is concerned. I am perfectly alive to my own responsibilities. Because in another House some distinguished gentlemen have perhaps voted one way, it is no reason why this House should do the same. Of course, each Member of the House has his own responsibility and I speak on my own responsibility and believe that this motion moved by my Honourable friend Mr. Karandikar is rather premature. I say premature for this reason that, under the present circumstances of the country, none who has eyes to see and ears to hear as to what is happening in the country can, with an unbiassed mind, say that this part of the Criminal Law Amendment Act should be repealed at this very juncture. At this juncture I ask anybody here whether there is quiet in the land or whether there are not mischievous elements going about here, there and everywhere in different parts of the provinces. It is only a match which is required to kindle the fire which will burst into a flame, and when the flame is burning what will happen? The very people who now loudly agitate for the repeal will turn round and say that the Government of India should have taken this step and that, and that they were very careless and negligent, with the result that the whole country is again put into this kind of unrest, dislocating trade and everything else and raising one man's hand against another. That would be the state of things. Sir, it may be that some Honourable Members will think otherwise. But considering the reports of mischief that are appearing in the press every day and also what have not infrequently come to the ears of people generally, I cannot but assert that the tranquillity of the country is greatly disturbed. A year ago it was better, but now it is worse. And, therefore, no Government with any sense of responsibility and anxious for the preservation of law and order would do anything so unwise as to repeal at such a time this Act. I, for one, Sir, do believe that the Government are wise in continuing this Act so far and this motion seems to me to be wholly premature. If it is repealed, it is certain to prove exceedingly mischievous. I said, Sir, in the beginning that I was speaking on my own responsibility and I repeat that, if the masses of the country are to be afforded rest and tranquillity and are to follow their peaceful avocations, and if the trade and the present economic conditions of the country are not to be disturbed, I am emphatically of opinion that this law ought not to be repealed for the time being. The time for its repeal has not yet arrived. Here we have a Viceroy who had occupied before his arrival here the highest seat of justice in England and whose learned disquisitions and judgments are well known. We may be trusted to know the laws of this land and to take occasion when

some could be repealed. We can fully rely on his judgment and experience when to repeal the section. On him and him alone lies the ultimate responsibility when a section of the nature we are discussing ought to be repealed after hearing all sides and ascertaining the true state of the country. Have we not in this House often said that we have a great regard for the soundness, the wisdom and the statesmanship of the great Viceroy, he who was once the Lord Chief Justice of England? Is it not the fact that we have every confidence in his judgment? Shall we not rely on him if he considers that in the present circumstances of the country the ordinary law is not sufficient and therefore this special law should be continued? The disease is there and a remedy is required for it. If the disease is to be cured, it cannot be cured by the repeal of this law. Desperate diseases require desperate remedies. Those remedies must be taken in hand until the country is once more at rest and tranquillity fully restored. Under these circumstances, I consider it a short-sighted and most unstatesmanlike policy on the part of those who in this House or in the other or outside both agitate for the repeal of the section and say that this law is autocratic and talk all sorts of nonsense about it. The whole problem lies in a nutshell. The question is whether at this moment there is tranquillity in the land or not; and I challenge anybody in this House or outside it to say that there is tranquillity and peace in the country and to say unhesitatingly that if this law is repealed there will be no rebellion. Sir, I consider it a very serious thing to have a rebellion at this juncture. Everything seems to be converging to that event. Those who are watching the trend of those movements which are going on here and there know well enough that there are people who remain behind the screen and put forward volunteers and other secret emissaries to bring about that end. Sir, this is not a situation to be tolerated with equanimity in this country. If India is to have peace, if India is to have tranquillity and to see that the reforms already introduced go on smoothly, then I do say, and most emphatically say, that this law should be continued till such time as the Viceroy himself, as a sound lawyer and as the one authority who is ultimately responsible for the tranquillity of the country, thinks that this part of the Criminal Law Amendment Act should go. With these words I take my seat.

THE HONOURABLE MR. R. P. KARANDIKAR: Sir, after what has fallen from our much venerated friend, the Honourable Sir Dinshaw Wacha, it would be futile indeed to add any further words unless one was convinced that he had a righteous cause. I rise here also on my own personal responsibility; I never yield to the proposition that because one House has satisfied itself one way therefore the other House must follow as a matter of course and must not go the other way; nobody ever thought of that at all. I have always been for Reforms such as have been adumbrated in that noble Imperial Message, which ran as follows:

"For years, it may be for generations, patriotic and loyal Indians have dreamed of *Swaraj* for their motherland. To-day you have beginnings of *Swaraj* within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy."

It is that after which we are, every one of us. I do not distinguish between a Bill brought in by a private Member and another brought in by a Government Member in the least. I am as much a part of the Government of the country as the other Government officers may be. I speak with a sense

[Mr. R. P. Karandikar.]

of responsibility. I move among the people; I know their pulse and I am not to be hurried like that with an overdrawn picture like the one drawn by the Honourable Sir Dinshaw Wacha.

THE HONOURABLE SIR DINSHAW WACHA: That may be your idea; it is not my idea; I also move in the country like you.

THE HONOURABLE MR. R. P. KARANDIKAR: Opinions differ as watches; but I should really think that nobody ought to yield to the proposition that India is verging on rebellion. I have been pained to note that Honourable Members are giving a lever to those outside India by tomtomming that India is seething with sedition and at any moment there may be a conflagration. I shall leave it at that, and, with your permission, Sir, I proceed. I do deprecate the idea that political organisations and associations are degenerating into anarchical associations; and any Swaraj brought about by political associations degenerating into anarchical associations is as much to be deprecated as that Swaraj which is to be brought in by repressive measures. Both have to be judged on their own merits, and it is therefore that we are seeking to correct the law as it is. In the opinion of some my point of view may be theoretical; I speak with a practical responsibility that if we are to maintain British prestige—and it is the prestige of the British institutions that it is known to hear the other side whenever anything has to be said against them—it is that thing which has to be aimed at by all legislation. This is our central Legislature. I am anxious that nothing should go out which will give any impression to any Indian whatsoever that the executive has got the widest power to work out any scheme *in camera* and yet the persons or associations against whom the executive order is working can have no insight into the evidence adduced. I know the executive have been managing their own affairs in the past. We perfectly sympathise with them and we are ready to give them all logical, legitimate and legal powers. But a law which arms the executive with a power which they can use without any restraint—I do not want to comment upon the kind of assertion made that it is public opinion which will bring round Government—I do not think such a power ought to be vested in the executive. Public opinion ceases if based upon ignorance; we do not know anything about a measure; we do not hear anything about it; if the information in the possession of the executive is to be made available to the public, then only public opinion can have any weight. Why not supply to the associations concerned this information about these associations which have been brought into the clutches of the law? It is there the difference lies. There is no difference whatever between us as to the methods to be adopted with reference to that kind of association. I appeal to this House to rectify the mistake committed by this Act of 1908 at a time perhaps when it was most expedient in the interests of the country that this Legislature should pass that legislation. It is time now for the corrective. I am told that it is now premature, that this is not the time and that I should wait till the next Council of State, six months hence; and the Bill to survive? I doubt it. Then there were two courses open to me to move the Bill, as I do or to allow this Bill passed by the other House to die a death—some say it would be natural; I would say it would be most unnatural, a most ignominious death. I shall have at least the satisfaction of putting the Bill before this House so that ample testimony may go out that the people concerned in this House did have an opportunity

of considering the matter before they decided one way or the other. But I shall not take the discredit of withdrawing this piece of legislation, as I do think that it is for this House to declare one way or the other. I appeal to the House that there is no serious trouble; and to declare now that the country is seething with that trouble is, I think, suicidal. I submit, Sir, the course which the House will wish to adopt, is to consider the Bill.

THE HONOURABLE SIR ALEXANDER MUDDIMAN: Sir, I listened with great interest to the speeches that have been delivered from various sides of this House and I must say that having heard them and listened to them with attention I do not understand how any speaker can vote for the motion which is now being put to this House. It is necessary that I should bring the House to the fact that a complete repeal is the only question for its decision—the complete repeal of Part II of the Act in question. No speaker, not even the Honourable Mover, has brought forward one circumstance, which would justify that. My Honourable friend, Mr. Natesan, has said that this is a very light matter and it is only a recommendation which Government could accept or not accept. Sir, let me remind the House that this is a question of legislation. If this House passes this measure, the only thing which stands between the repeal and the retention of the measure is the veto of His Excellency the Viceroy. You have the gravest responsibility in coming to a conclusion of that nature. You are not here making a recommendation; you are not here offering terms; you are saying, "We will take this power away." We have told you as an executive government that we consider it necessary. You say that you are practically making a recommendation; but do not for a second imagine that you are taking any light decision; do not for a second imagine that it is a mere gesture. This is an Act, the consequence of the repeal of which I personally cannot foresee. The power of veto is not with the executive government. The veto is vested in His Excellency the Governor General alone, and his discretion is the sole test of its use. There is no remedy in my hand or in the hands of my Honourable Colleagues. If this House passes this Bill, the Government of India have no power whatever in the matter. I desire to make that clear. My Honourable friend the oldest member in this House, Sir Dinshaw Wacha, in very moving terms, has drawn your attention to the state of affairs in this country. I trust the remarks of a man, a persistent promoter of liberal ideas in India through a long period, will not escape the attention of the House. Then, Sir, we have the Members from Bengal, my own Province. What have they said that would justify them in voting for this measure? They have said they do not like it. They have said the state of things in Bengal is very bad. We know the charge that those unfriendly to Indian aspirations frequently make is that under no conditions will open support be given to the maintenance of law and order. My friends say, "We will not vote against this measure; we will vote for some other measure that is not brought forward, something that is not before the House. But now, Sir, Members have to vote quite definitely on a very definite issue, the repeal or the failure to repeal this Act, and I am very confident that, and I trust sincerely that there is no Member in this House who will register a vote so detrimental to the future of India as to support a motion for the repeal of this Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to repeal certain provisions of the Indian Criminal Law Amendment Act, 1908, as passed by the Legislative Assembly, be taken into consideration."

[The President.]

(A division was claimed.)

A division will be taken. Before it is taken, before the Secretary reads the names, I wish to remind Honourable Members of the practice established in this House since its inauguration under the orders of one of my distinguished predecessors as to the method of taking divisions. It is simply that when an Honourable Member's name is called by the Secretary, he will rise in his place to record his vote, and he will say "aye" or "no" or "not voting", as the case may be. I observed on the last occasion when a division was taken that practice was not scrupulously followed by Honourable Members. I hope it will not be overlooked.

The Council divided:

AYES—6.

Ayyangar, Mr. K. V. R.
Karandikar, Mr. R. P.
Natesan, Mr. G. A.

Ray, Raja P. N.
Sarvadhikary, Sir Deva Prasad.
Vedamurti, Mr. S.

NOES—26.

Amiruddeen Ahmad Khan Nawab Sir.
Bell, Mr. J. W. A.
Berthoud, Mr. E. H.
Chadwick, Mr. D. T.
Crerar, Mr. J.
Dadabhoy, Sir Maneckji.
Dawn, Mr. W. A. W.
Froom, Sir Arthur.
Habibullah, Sir Muhammad.
Harnam Singh, Raja Sir.
Hindley, Mr. C. D. M.
Ismail Khan, Mr. Muhammad.
Ley, Mr. A. H.

MacWatt, Major-General Sir Charles.
McWatters, Mr. A. C.
Misra, Pandit S. B.
Mitter, Mr. K. N.
Patterson, Lieut.-Col. S. B. A.
Rampal Singh, Raja Sir.
Sarma, Sir Narasimha.
Singh, Mr. Charanjit.
Tek Chand, Diwan.
Wacha, Sir Dinshaw.
Wild, Mr. A. C.
Yamin Khan, Mr.
Zahir-ud-din, Mr.

The motion was negatived.

ELECTIONS OF PANELS FOR STANDING ADVISORY COMMITTEES.

THE HONOURABLE THE PRESIDENT: I have to announce to the House the nominations to the various panels for the Standing Advisory Committees to the Departments of the Government of India. There have been nominated for the panel for the Standing Advisory Committee for the Home Department:

The Honourable Nawab Sir Amiruddeen Ahmed Khan,
The Honourable Mr. Muhammad Yamin Khan,
The Honourable Sir Maneckji Dadabhoy,
The Honourable Dr. Dwarkanath Mitter,
The Honourable Dr. Sir Deva Prasad Sarvadhikary,
The Honourable Sir Zulfiqar Ali Khan,
The Honourable Mr. Lalubhai Samaldas,
The Honourable Nawab Sir Umar Hayat Khan,
The Honourable Mr. Phiroze C. Sethna,
The Honourable Sir Arthur Froom, and
The Honourable Mr. J. W. A. Bell.

For the panel for the Standing Advisory Committee for the Department of Education, Health and Lands;

The Honourable Nawab Sir Umar Hayat Khan,
The Honourable Haji Chowdhri Muhammad Ismail Khan,
The Honourable Mr. R. P. Karandikar,
The Honourable Mr. G. A. Natesan,
The Honourable Lala Sukhbir Sinha,
The Honourable Saiyid Raza Ali,
The Honourable Dr. Sir Deva Prasad Sarvadhikary,
The Honourable Mr. Lalubhai Samaldas,
The Honourable Sardar Charanjit Singh,
The Honourable Maharaja Soshi Kanta Acharya Chaudhri of Muktagacha, and
The Honourable Mr. Haroon Jaffer.

For the panel for the Standing Advisory Committee in the Department of Industries and Labour:

The Honourable Mr. Muhammad Yamin Khan,
The Honourable Rai Bahadur Lala Ram Saran Das,
The Honourable Sir Arthur Froom,
The Honourable Mr. J. W. A. Bell,
The Honourable Sir Maneckji Dadabhoy,
The Honourable Mr. Phiroze C. Sethna,
The Honourable Saiyid Raza Ali,
The Honourable Dr. Dwarkanath Mitter,
The Honourable Mr. W. A. W. Dawn,
The Honourable Sir Deva Prasad Sarvadhikary, and
The Honourable Mr. Lalubhai Samaldas.

For the panel for the Standing Advisory Committee in the Commerce Department:

The Honourable Mr. R. P. Karandikar,
The Honourable Mr. Phiroze C. Sethna,
The Honourable Sir Arthur Froom,
The Honourable Mr. J. W. A. Bell,
The Honourable Sir Maneckji Dadabhoy,
The Honourable Haji Chowdhri Muhammad Ismail Khan,
The Honourable Rai Bahadur Lala Ram Saran Das,
The Honourable Sardar Jogendra Singh,
The Honourable Mr. Yamin Khan, and
The Honourable Sardar Charanjit Singh.

As in every case the number of Honourable Members nominated exceeds the number to be elected, it will be necessary to hold an election. I propose that the elections should take place on Thursday next, the 26th instant,

STATEMENT OF BUSINESS.

THE HONOURABLE THE PRESIDENT: Has the Honourable the Leader of the House any statement to make in regard to the business of the House?

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): The Council is aware, Sir, that to-morrow has been appointed for the discussion of the Railway Budget. On Wednesday the Honourable Mr. Haroon Jaffer's Resolution regarding the reshaping of India's water-roads, which in the ordinary course would have been moved last week, will be put down after the Resolutions ballotted for that day have been disposed of. On Thursday I shall move that the Bill to determine the salary of the President of the Legislative Assembly, as passed by the Legislative Assembly, be taken into consideration and passed, and on the conclusion of Government business time will be given to the Honourable Sir Deva Prasad Sarvadhikary to move similar motions with reference to the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly.

The Council then adjourned till Eleven of the Clock on Tuesday, the 24th February, 1925.