

12th September 1929

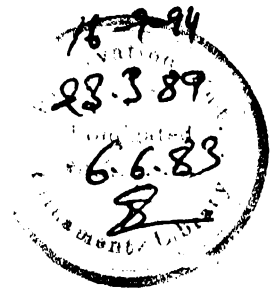
THE  
**LEGISLATIVE ASSEMBLY DEBATES**  
**(Official Report)**

Volume IV

*(2nd September to 17th September, 1929)*

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**FIFTH SESSION**  
OF THE  
**THIRD LEGISLATIVE ASSEMBLY**  
**1929**



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GOVERNMENT OF INDIA PRESS  
1930

# Legislative Assembly.

## *President :*

THE HONOURABLE MR. V. J. PATEL.

## *Deputy President :*

MAULVI MUHAMMAD YAKUB, M.L.A.

## *Panel of Chairmen :*

PANDIT MADAN MOHAN MALAVIYA, M.L.A.

SIR DARCY LINDSAY, KT., C.B.E., M.L.A.

SIR PURSHOTAMDAS THAKURDAS, KT., C.I.E., M.B.E., M.L.A.

MR. JAMNADAS M. MEHTA, M.L.A.

## *Secretary :*

MR. S. C. GUPTA, BAR.-AT-LAW.

## *Assistant of the Secretary :*

RAI SAHIB D. DUTT.

## *Marshal :*

CAPTAIN SURAJ SINGH BAHADUR, I.O.M.

## *Committee on Public Petitions :*

MAULVI MUHAMMAD YAKUB, M.L.A., *Chairman.*

MR. DWARKA PRASAD MISRA, M.L.A.

SIR PURSHOTAMDAS THAKURDAS, KT., C.I.E., M.B.E., M.L.A.

MR. DHIRENDRA KANTA LAHIRI CHAUDHURY, M.L.A.

NAWAB SIR SAHIBZADA ABDUL QAIIYUM, K.C.I.E., M.L.A.

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# LEGISLATIVE ASSEMBLY.

Thursday, 12th September, 1929.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President in the Chair.

## QUESTIONS AND ANSWERS.

### CONDITIONS OF EDUCATION IN AJMER-MERWARA.

428. \*Maulvi Muhammad Yakub : (a) Is it a fact that a Committee—Primary Education Committee—appointed by the Government of India visited Ajmer to inquire into the conditions of education in Ajmer-Merwara ?

(b) Is it also a fact that nearly all the Muslim witnesses gave evidence that the Education Department of Ajmer-Merwara is predominated by Hindu spirit ?

(c) Is it a fact that, although the court language in Ajmer-Merwara is Urdu yet systematic efforts have been and are being made by the Education Department to train teachers in the Normal School in Hindi as their first language ?

(d) Will Government please say if they issued instructions to the Education Department to teach Hindi as first language in preference to Urdu ? If so, when ; if not, why is importance attached to Hindi and why is Urdu neglected ?

Sir Frank Noyce : (a) Yes.

(b) The Committee has not yet reported to Government.

(c) and (d). Inquiries are being made and the information asked for will be furnished to the Honourable Member later.

Rai Sahib Harbilas Sarda : Is it not a fact that both Hindi and Urdu are court languages in Ajmer-Merwara, and that plaints and petitions written in Hindi and filed in the Courts are accepted just as those written in Urdu ?

Sir Frank Noyce : I should not like to give an authoritative reply to my Honourable friend's question ; but I believe the facts are as he states.

Rai Sahib Harbilas Sarda : Is it not a fact that the Normal School has been in existence in Ajmer for the last fifty years, and that Hindi has always been the first language taught in it ?

Sir Frank Noyce : I cannot tell the Honourable Member how long the Normal School has been in existence, but it has been in existence for a considerable time, and I believe it is a fact that Hindi is the first language taught in it.

Rai Sahib Harbilas Sarda : Is it not a fact that in the primary schools in Ajmer-Merwara, Hindi has been the first language taught in

the district ever since the British Government established the public school system of education in Ajmer-Merwara ?

**Mr. President :** The Honourable Member should give notice of such questions.

**Dr. B. S. Moonje :** What is meant by the words "Hindu spirit" in part (b) of the question to which an answer has been given by the Honourable Member ?

**Sir Frank Noyce :** I think that that question might be more fitly put to the Honourable Member who asked the original question. My reply has been that the Committee has not yet reported to Government.

**Dr. B. S. Moonje :** The question put is that the Department is "predominated by Hindu spirit". The Honourable Member must have understood its meaning before replying to it. I should therefore like to know what is meant by it and what the Honourable Member understood by it. That is why I am asking this question : does it mean that educationally competent men are not to be taken on the Committee if they happen to be Hindus and not Muslims ?

**Sir Frank Noyce :** The original question was "Is it also a fact that nearly all the Muslim witnesses gave evidence that the Education Department of Ajmer-Merwara is predominated by Hindu spirit ?" I am obviously not in a position to reply to that until I have seen the evidence of the Muslim witnesses : that has not yet been received by Government.

\* **Maulvi Muhammad Yakub :** Will the Honourable Member take the trouble to read the evidence and draw his conclusions from that ?

**Sir Frank Noyce :** I shall study the evidence very carefully in due course.

#### ANTI-ISLAMIC LITERATURE IN THE LIBRARY OF THE NORMAL SCHOOL, AJMER.

429. \***Maulvi Muhammad Yakub :** (a) Is it a fact that during the examination of Mirza Abdul Qadir Beg, M.A., LL.B., Pleader, Ajmer, by the Primary Education Committee, it transpired that the library of the Normal School which is an institution maintained by Government from public revenues, is full of anti-Islamic literature ?

(b) Is it a fact that the following books were found in the said library :—

- (1) "Allah Miyan ke Hathkande",
- (2) "Quran ka pol",
- (3) "Rasool ki pothi" ?

(c) Is it a fact that such anti-Islamic literature in the library of a Government institution was purchased from public revenues ?

(d) Will Government please state who purchased such books and which officer sanctioned the purchase of such books and who passed the purchase bill for payment ?

(e) Will Government please state whether they propose to take action against the educational officers who purchased such books ?

**Sir Frank Noyce :** (a) The library certainly had some literature of a propagandist character.

(b) Of the books mentioned, the only one produced was entitled "Allah Miyan ke Hathkande". Nothing is known about the other two books mentioned, but inquiries are being made.

(c) and (d). Inquiries are being made.

(e) This will be considered when the inquiries have been completed.

**Mr. Gaya Prasad Singh :** Is that first book proscribed, may I know ?

**Sir Frank Noyce :** I cannot say.

**Rai Sahib Harbilas Sarda :** Is it also a fact that "Mother India", containing an attack on the Hindu religion and customs, was placed in the library during the time of the late Muslim Headmaster, who is now under suspension ?

**Sir Frank Noyce :** I do not know, but I shall be glad to make inquiries in connection with the other inquiries that are being made.

PROMOTION OF MUNSHI GAYA PRASAD, DEPUTY INSPECTOR OF SCHOOLS,  
AJMER-MERWARA.

430. \***Maulvi Muhammad Yakub :** (a) Is it a fact that Munshi Gaya Prasad, the Deputy Inspector of Schools, Ajmer-Merwara, has recently been promoted to the grade of Rs. 150—200 ?

(b) Is it a fact that this grade now held by this official did not exist, but a lower grade was raised for him specially and he was appointed to it ?

(c) Is it a fact that this official is merely a vernacular middle-trained man and does not know English at all ?

(d) Will Government please state how many non-gazetted posts of Rs. 200 or over are there in the Education Department of Ajmer-Merwara to which trained graduates in the Ajmer-Merwara cadre can aspire ?

(e) Will Government please state what is the number of trained graduates holding posts in the Education Department of Ajmer-Merwara with salaries below Rs. 150—200 ?

(f) Is it a fact that this Munshi Gaya Prasad, Deputy Inspector of Schools, is the same official about whom an interpellation was made in the Assembly in 1926 when he was a Sub-Deputy Inspector ?

(g) Is it also a fact that the Government's answer was that there was no proposal to give him a higher grade ?

(h) Will Government please state the grounds on which there was no proposal in 1926 to raise Munshi Gaya Prasad's grade and the grounds which necessitated the raising of his grade in 1928 ?

**Sir Frank Noyce :** (a) No ; the new grade is Rs. 100—10—200.

(b) The reply to the first part is in the affirmative and to the second in the negative. For administrative reasons the pay of the post was revised.

(c) and (f). Yes.

(d) Eight.

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(e) Nine.

(g) The question asked in 1926 was whether it was proposed to promote him to a higher post carrying a monthly pay of Rs. 600, and the answer was in the negative.

(h) Please see replies to (b) and (g).

**Rai Sahib Harbilas Sarda :** Is it a fact that the Primary Education Committee, when it went to Ajmer-Merwara and inspected the schools throughout the district, found Mr. Gaya Prasad a most competent officer ?

(No answer was given.)

**ALLEGATIONS AGAINST MUNSHI GAYA PRASAD WHEN IN CHARGE OF THE CENTRAL GIRLS' SCHOOL, AJMER.**

431. \***Maulvi Muhammad Yakub :** (a) Is it a fact that about ten years ago, when Mr. Miller was Inspector of Schools in Ajmer-Merwara, the charge of the Central Girls School, Ajmer, was taken away from the said Munshi Gaya Prasad ?

(b) Is it a fact that this charge of the Girls' School was taken away by the special order of Colonel Patterson, the then Director of Public Instruction and Commissioner of Ajmer-Merwara ?

(c) Is it a fact that the order of Colonel Patterson for taking away this charge was the result of his personal visit to the Girls' School with Mr. Miller for inquiry into certain allegations made against the conduct of this official in his dealings with the Girls' School ? If so, will Government please state what was the nature of those allegations ?

(d) Is it a fact that the said Munshi Gaya Prasad, Deputy Inspector of Schools, is under the direct control of Mr. P. B. Joshi, Assistant Superintendent of Education, and his promotion from his original grade to the grade of Rs. 150—200 was supported by Mr. Joshi ?

**Sir Frank Noyce :** (a) and (b). Yes.

(c) There is no record of any such inquiry.

(d) The answer to the first part is in the affirmative. As regards the second part, recommendations of officers regarding the personnel serving under them are confidential.

**COMPLAINTS BY LADY TEACHERS OF THE CENTRAL GIRLS' SCHOOL, AJMER, AGAINST MR. P. B. JOSHI, ASSISTANT SUPERINTENDENT OF EDUCATION, AND MUNSHI GAYA PRASAD.**

432. \***Maulvi Muhammad Yakub :** (a) Is it a fact that the Assistant Superintendent of Education not long after his appointment to his present post visited the Girls' School in the company of Munshi Gaya Prasad, which was followed by a protest on the part of certain lady teachers to the Superintendent of Education ? If so, what was the nature of the complaints against the officers named above ?

(b) Is it a fact that during 1928 there was a strike in one section of the Girls' School, Ajmer ?

(c) Is it a fact that in a section of the local Hindi Press certain allegations were made against the conduct of Mr. P. B. Joshi, Assistant Superintendent of Education, in connection with that strike ?

(d) Is it a fact that in reply to the allegations of the Hindi Press, the Assistant Superintendent of Education, Mr. Joshi, also made a statement to the Press in the course of which he said that the public has nothing to do with his private life ?

(e) Will Government please state whether they took any notice of the Press statement of Mr. Joshi. If not, will Government please state why no action was taken ; and if any action was taken, what was the action taken ?

**Sir Frank Noyce :** The information asked for is being collected and will be supplied to the Honourable Member later.

**INSTRUCTIONS ISSUED BY THE PRESIDENCY POSTMASTER, CALCUTTA, REGARDING INSURED PARCELS.**

**433. \*Mr. S. C. Mitra :** (a) Is it a fact that the Presidency Postmaster, Calcutta, has issued a Memorandum No. A.I.-161 under date 14th August, 1929, containing instructions that insured parcels, inside the insured parcel bags closed by the local town sub-offices, will not be required to be checked at the time of opening of the parcel bags or for sorting, etc. ?

(b) If so, will Government be pleased to state whether the Presidency Postmaster has any authority to issue such orders and whether they are against the Manual Rules ?

(c) Will Government please state who will be responsible for fraud or losses occurring in such transactions ?

**The Honourable Sir Bhupendra Nath Mitra :** Inquiries are being made and the result will be communicated to the Honourable Member in due course.

**PAY OF THE SUB-POSTMASTER, HATKHOLA POST OFFICE.**

**434. \*Mr. S. C. Mitra :** (a) Will Government be pleased to state how many clerks or sorting postmen there are in the Poona City Post Office and the Hatkhola Post Office in Calcutta ?

(b) Is it a fact that the pay of the Sub-Postmaster of the Poona City Post Office has been raised to the grade of Rs. 250—350, while that of the Sub-Postmaster, Hatkhola Post Office, is still in the grade of Rs. 160—250 ?

(c) If the reply to part (b) be in the affirmative, will Government please state the reason for this difference, and whether Government contemplate raising the pay of the Sub-Postmaster, Hatkhola Post Office ?

(d) Is it a fact that the pay of the Deputy Sub-Postmaster of the Hatkhola Post Office is still in the time-scale of pay, while that of the Sub-Postmaster, Intally Post Office in the same town, where there is a less number of clerks, is on the selection grade ? If so, will Government be pleased to state on what principle selection grade posts are fixed in post offices ?

(e) Is it a fact that this anomaly was brought to the notice of the authorities long ago by the local Postal Union ? If so, what action has been taken by the Department ? If not, why not ?

**The Honourable Sir Bhupendra Nath Mitra :**

	Clerks.	Sorting postmen.
(a) Poona City Post Office .. ..	33	9
Hatkholra Post Office .. ..	20	3

(b) The reply is in the affirmative.

(c) The reason for the difference in the pay of the Sub-Postmasters, Poona City and Hatkhola is the disparity in the responsibilities of the two posts, as indicated by the figures given in my reply to part (a) above. As regards the latter part of the question, the Honourable Member is referred to the Director General's demi-official letter No. 325-Est. B. 28, dated the 25th January, 1929, to Rai Bahadur Tarit Bhushan Roy, a copy of which has been placed in the Library of the House.

(d) The reply to the first part of the question is in the affirmative. As regards the second part, the Honourable Member's attention is invited to the reply given in this House to Mr. Amar Nath Dutt's unstarred question No. 290 of 6th March, 1929.

(e) Yes, the matter is still under consideration of the Director General.

#### INCREASE OF THE NUMBER OF TOWN INSPECTORS OF POST OFFICES IN CALCUTTA.

435. \*Mr. S. C. Mitra : (a) Will Government be pleased to state how many Town Inspectors of Post Offices there are in Bombay and in Calcutta ?

(b) Is it a fact that the number of Town Inspectors in Bombay is much larger than that in Calcutta ? If so, what is the reason for this difference ?

(c) Do Government contemplate increasing the number of Town Inspectors in Calcutta ? If not, why not ?

**The Honourable Sir Bhupendra Nath Mitra :** (a) 11 in Bombay and 9 in Calcutta.

(b) As the Honourable Member will see from my reply to part (a) of his question, the number of Town Inspectors in Bombay is only slightly in excess of the number in Calcutta, the difference being accounted for by the fact that the work is heavier in Bombay than in Calcutta.

(c) No, because the number of Town Inspectors in Calcutta is at present adequate for the duties which they have to perform.

#### UNSUITABLE BUILDINGS OF THE BOWBAZAR AND COLOOTOLAH POST OFFICES.

436. \*Mr. S. C. Mitra : Will Government be pleased to state if they have received any complaints that the condition of buildings in which the Bowbazar and Colootolah Post Offices are located is very bad, and that the public and the postal employees are much inconvenienced thereby ? If so, will Government be pleased to state what steps they propose to take in the matter ?

**The Honourable Sir Bhupendra Nath Mitra :** Representations have been received regarding the Bowbazar Post Office, where the accommodation for the public and staff is somewhat restricted, but the building is otherwise well-suited to the requirements of the Post Office, being very centrally and conveniently situated for all purposes. Negotiations had been entered into with the landlord to extend the building, but the Director General has just learnt from the Postmaster General that the landlord has since withdrawn his offer. Fresh efforts will be made to secure a suitable building.

As regards the location of the Colootolah Post Office building, no complaints have been received.

**REPORT OF MR. G. V. BEWOOR, A POSTMASTER GENERAL, ON THE TIME-TEST OF THE POSTAL DEPARTMENT.**

437. **\*Mr. S. C. Mitra :** (a) Will Government be pleased to state if it is a fact that they appointed Mr. G. V. Bewoor, I.C.S., a Postmaster General, to examine the time-test of the Postal Department ? If so, will Government be pleased to publish, for the information of the House, his full report and recommendations ?

(b) Will Government be pleased to state whether they have examined the report and accepted the same ? If not, why not ?

**The Honourable Sir Bhupendra Nath Mitra :** (a) The reply to the first part of the question is in the affirmative. As regards the second part, Government have not yet decided whether the report shall be published or not.

(b) The report is still under the consideration of the Director General and his views have not yet reached Government.

**NUMBER OF CLERKS IN THE REGISTRATION PACKET SORTING DEPARTMENT OF THE CALCUTTA GENERAL POST OFFICE.**

438. **\*Mr. S. C. Mitra :** (a) Will Government be pleased to state how many clerks are there, in the Registration Packet Sorting Department of the Calcutta G. P. O. ?

(b) Is it a fact that this important Department has been placed in charge of a time-scale clerk ?

(c) Is it not a fact that the Postal Enquiry Committee recommended that a Department or office with five clerks or more should be placed in charge of a selection grade Supervisor ? If so, why is this Department still left in charge of a time-scale official ?

**The Honourable Sir Bhupendra Nath Mitra :** (a), (b) and (c). The information is being collected and will be furnished to the Honourable Member in due course.

**INTRODUCTION OF A CONTRACT SYSTEM FOR TREASURY WORK IN CERTAIN POST OFFICES IN BENGAL AND ASSAM.**

439. **\*Mr. S. C. Mitra :** (a) Is it a fact that Government contemplate having treasury work done by the contract system in certain post offices of Calcutta and of Bengal and Assam ?

(b) If the reply to part (a) be in the affirmative, will Government be pleased to state how they will provide for the officials who are at present performing these duties ?

(c) Will Government please state further when the contract system will come into vogue ?

**The Honourable Sir Bhupendra Nath Mitra :** (a) Yes.

(b) The attention of the Honourable Member is invited to the reply given on 12th March, 1929, to part (c) of his question No. 1018.

(c) Tenders have been called for, but at present it is not possible to state the precise date from which the new arrangements will come into force.

**APPOINTMENT BY THE PRESIDENCY POSTMASTER, CALCUTTA, OF WOMEN CLERKS ON HIGHER PAY THAN MALE CLERKS IN THE CALCUTTA GENERAL POST OFFICE.**

440. **\*Mr. S. C. Mitra :** (a) Is it a fact that the present Presidency Postmaster, Calcutta, has appointed many women clerks in the Calcutta G. P. O. since his assumption of office ? If so, will Government be pleased to state how many women clerks there were before his taking over charge of the Calcutta G. P. O. and how many have been appointed during his régime ?

(b) Is it a fact that the scale of pay of the women clerks is much higher than that of male clerks ? If so, will Government be pleased to state the reason for the employment of so many women clerks on higher pay instead of male clerks ?

(c) Is it a fact that there are many Hindu and Muslim candidates who are waiting for confirmation and are being superseded by these women clerks ?

(d) Is it also a fact that these women clerks are directly made permanent and that, before confirmation, they are not required to appear in the examination for post office clerks ? If so, will Government be pleased to state why this special preference is given to the women clerks when the male clerks are subjected to this examination ?

**The Honourable Sir Bhupendra Nath Mitra :** Information is being collected and will be supplied to the Honourable Member in due course.

**INCREASE OF SELECTION GRADE CLERICAL APPOINTMENTS IN THE GENERAL POST OFFICE, CALCUTTA.**

441. **\*Mr. S. C. Mitra :** (a) Will Government be pleased to state (i) the number of clerks in the Bombay and Calcutta G. P. Os., (ii) the number of appointments in the grades of Rs. 350—650, Rs. 250—350, and Rs. 160—250 in these two offices ?

(b) Is it a fact that the number of selection grade appointments is much higher in Bombay than in Calcutta ?

(c) If the reply to part (b) be in the affirmative, will Government please state the reason for this difference ?

(d) Do Government propose to increase the number of selection grade appointments in the Calcutta G. P. O. ? If not, why not ?

**The Honourable Sir Bhupendra Nath Mitra :**

(a) (i). Bombay General Post Office and Town Sub-Offices 1,123  
Calcutta General Post Office and Town Sub-Offices .. 1,426

(ii) Appointments in the grade of

	Rs. 350—650.	Rs.250—350.	Rs.160—250.
Bombay .. .. .	7	14	90
Calcutta .. .. .	8	14	91

(b) No.

(c) and (d). Do not arise.

**INCREASE OF SELECTION GRADE APPOINTMENTS IN THE DEAD LETTER OFFICE, CALCUTTA.**

442. **\*Mr. S. C. Mitra :** (a) Will Government be pleased to state whether the percentage of selection grade appointments in the Dead Letter Offices in Bombay and Madras is much higher than that in Calcutta ?

(b) If the reply to part (a) be in the affirmative, will Government please state the reason for such low percentage of selection grade appointments in the Calcutta Dead Letter Office and whether they contemplate increasing the number of selection grade appointments in that office ?

**The Honourable Sir Bhupendra Nath Mitra :** (a) Yes.

(b) The Honourable Member is referred to the reply given in this House to Mr. Amar Nath Dutt's unstarred question No. 286 on the 6th March, 1929.

**REPLIES FROM RAILWAY ADMINISTRATIONS *re* RACIAL DISTINCTIONS IN SUBORDINATE RAILWAY ESTABLISHMENTS.**

443. **\*Pandit Hirday Nath Kuneru :** (a) With reference to the statement made by Mr. Parsons in the debate on racial distinctions in the subordinate railway establishments in February last, have further replies been received from the Agents of any Railways ? If so, will Government be pleased to lay them on the table ?

(b) Are there any Railway Administrations from which no replies have been received as yet ?

(c) What action have Government decided to take in view of the replies already received ?

**Mr. P. B. Rau :** (a) Copies of replies received from railways have been placed in the Library of the House.

(b) No.

(c) The replies received from Railway Administrations are being carefully examined with a view to eliminating any instances of racial distinction that still remain. The policy of Government in this matter has been explained by the Honourable Sir George Rainy in the course of the budget debates in February last.

**Pandit Hirday Nath Kunzru :** Is it a fact that the replies of the various Railway Administrations have been in the hands of Government for more than six months ?

**Mr. P. B. Rau :** I am not quite sure of that.

**Pandit Hirday Nath Kunzru :** Will the Honourable Member admit that they have been in the hands of Government for many months ?

**Mr. P. B. Rau :** They have been in the hands of Government for some time.

**Pandit Hirday Nath Kunzru :** When do Government then propose to issue orders ?

**The Honourable Sir George Rainy :** I think that the case will probably be ripe for orders at a very early date.

#### SALARIES OF TEACHERS IN RAILWAY SCHOOLS.

**444. \*Pandit Hirday Nath Kunzru :** (a) Are Government aware that the Honourable the Railway Member made the following statement with regard to railway schools in concluding the general discussion on the last Railway Budget :

“ It is our intention that, without waiting for the transfer of the schools, the pay of the existing teachers in the railway schools should be raised to the level prevailing in the province in which the school is situated. As regards the higher English schools maintained by the East Indian Railway, we have already issued specific orders to that effect ; we have still got to issue orders about the remainder.”

(b) Have specific orders been issued to railways other than the East Indian Railway ? If so, will Government please lay on the table a copy of the instructions issued to them ?

(c) Have the scales of salary of teachers in the East Indian Railway High Schools been raised in the manner directed by the Railway Board ? If not, why has there been so much delay in carrying out the orders of the Railway Board ?

**Mr. P. B. Rau :** The Honourable Member is referred to the reply given yesterday to starred question No. 369 by Kumar Ganganand Sinha.

**Pandit Hirday Nath Kunzru :** Are we to understand that the orders of the Railway Board with regard to the raising of the salaries of the teachers in the East Indian Railway High Schools have not yet been given effect to ?

**Mr. P. B. Rau :** The instructions of the Railway Board were that the orders should be given effect to from the 1st April 1929.

**Pandit Hirday Nath Kunzru :** Why has the salary not been raised to the scale proposed by the Railway Board ?

**Mr. P. B. Rau :** I am not aware that the orders have not been given effect to. The final orders of the Railway Board were issued only in August last.

**TRANSFER TO LOCAL GOVERNMENTS OF SCHOOLS MAINTAINED BY THE EAST INDIAN AND OTHER RAILWAYS AND STATUS OF THE SAME.**

**445. \*Pandit Hirday Nath Kunzru :** (a) With reference to the reply given to starred question No. 390 on the 4th February, 1929, will Government please state whether the Local Governments concerned have agreed to take over the schools maintained by the East Indian and other Railways ? If so, what are the terms of transfer ?

(b) Will the schools maintained by the East Indian Railway for Indian children be regarded as Government or aided schools ?

(c) What is the status of schools maintained by the East Indian Railway for European and Anglo-Indian children ?

**Mr. P. R. Rau :** (a) The general question is still under correspondence with the Local Governments. The terms of transfer for particular schools have not yet been discussed.

(b) and (c). The Honourable Member presumably refers to the present status of schools maintained by the East Indian Railway.

The number of Indian schools is 13 of which two are Primary, six Middle and five High. All of these receive grants from the Railway, and all but three from the Local Government. The number of European schools is 22, of which 21 are Primary and one High School. All these receive grants from railway funds and all except two receive grants-in-aid from the Local Government.

**Pandit Hirday Nath Kunzru :** May I ask whether these schools are regarded as Government schools or not ?

**Mr. P. R. Rau :** Not yet.

**Pandit Hirday Nath Kunzru :** Is the Honourable Member aware that it was stated some time ago by his predecessor in this House that the East Indian Railway teachers were Government servants ? How does he say then that these schools are not Government schools ?

**The Honourable Sir George Rainy :** That schools are the property of the East Indian Railway, and the East Indian Railway belongs to the Government, and I do not think that there can be any doubt that they are Government schools in that sense.

**PROCEEDINGS OF THE CENTRAL ADVISORY COUNCIL FOR RAILWAYS.**

**446. \*Pandit Hirday Nath Kunzru :** (a) Did the Honourable the Railway Member state on the 21st February, 1929, that he would discuss with the Central Advisory Council whether its proceedings should be kept confidential ?

(b) Has the Council met since then ? If so, what is its decision on this point ?

**Mr. P. R. Rau :** The answer to part (a) of the question is in the affirmative, and to the first part of (b) in the negative. The subject is on the agenda of the next meeting of the Central Advisory Council.

### ALLEGED DESECRATION OF CERTAIN MOSQUES BY AN ARCHÆOLOGICAL OFFICER.

447. \*Maulvi Muhammad Yakub : (1) Are Government aware that there is great unrest among the Muslims of Delhi on account of the desecration of certain mosques by an Archæological Officer ?

(2) Is it a fact that the Director General of Archæology has taken no action to pacify the feelings of Mussalmans in spite of many representations on the subject having been made to him direct and through the authorities at Delhi ?

(3) Is it a fact that the Archæological Department has appointed Hindu chowkidars to look after protected mosques in Delhi while no Muslim chowkidar has ever been appointed to look after a Hindu shrine ?

(4) If the answer to part (3) is in affirmative, will Government please state who is responsible for this, whether the Director General of Archæology or his circle officer ?

(5) Do Government propose to make a thorough inquiry into the matter immediately, independent of the Director General of Archæology and his staff, and remove all grievances ?

Sir Frank Noyce : (1) Representations have been received by the Director General of Archæology in India and the Chief Commissioner, Delhi Province, from certain Muhammadan bodies and individuals.

(2) No. The Director General has made careful inquiries into the charges brought against the Archæological Officer referred to in the representations, and finds them to be unsubstantiated, and the whole agitation to be due to the fact that the officer was compelled, in the course of his official duties, to object to encroachments upon and disfigurements to certain monuments protected under the Ancient Monuments Preservation Act.

(3) and (4). All appointments of chaukidars to protect monuments in Delhi are made by either the Public Works Department or the Horticulture Department of the Delhi Province.

(5) Government have instructed the Director General to make further personal inquiries into the case on the spot in Delhi at the beginning of this cold weather. The Director General will consider any representations which may then be put forward and will examine to what extent it is possible to secure that only Muhammadans are appointed as chaukidars to Muhammadan, and only Hindus as chaukidars to Hindu, monuments respectively.

### MAINTENANCE AND REPAIR OF OLD MONUMENTS NEAR DELHI.

448. \*Maulvi Muhammad Yakub : (a) Have Government seen the open letter addressed to the Chief Commissioner, Delhi, published in the local newspaper, the *Al Aman* of Delhi, dated 13th August, 1929, regarding the wretched state of certain old monuments in the neighbourhood of Delhi ; and will Government please state what steps, if any, the Director General of Archæology has hitherto taken or proposes to take for the maintenance and repairs of these relics of the past ?

(b) Will Government please state how many monuments the Director General of Archæology visited during his stay at Delhi during the last cold

season and what steps he took for the repair of these monuments ; and if not, why not ?

**Sir Frank Noyce :** (a) Yes. Only six of the ten monuments mentioned in the letter are protected under the Ancient Monuments Preservation Act ; all these are properly looked after.

(b) The Director General of Archaeology in India is not immediately responsible for the maintenance of any of these monuments, but he personally visited 84 out of 130 protected monuments in Delhi Province during his stay at Delhi last cold weather.

**ACADEMIC AND ARCHITECTURAL QUALIFICATIONS OF THE SUPERINTENDENT, BRITISH MONUMENTS, AGRA, AND THE ARCHÆOLOGICAL SUPERINTENDENT, WESTERN CIRCLE.**

449. \*Maulvi Muhammad Yakub : (1) Will Government please state the academic and architectural (especially Muhammadan architecture) qualifications of the present Superintendent, British Monuments, Agra, and the Archæological Superintendent, Western Circle, Poona ?

(2) Will Government please state if it is consistent with their policy to have two architects or two scholars in any one circle of the Archæological Department ? If not, why were two architects employed in the Agra and Western Circles and two scholars in the Central Circle of the Archæological Department ?

**Sir Frank Noyce :** (1) The present Superintendent, Northern Circle, Agra, is a Matriculate of the Allahabad University. The present Superintendent, Western Circle, Poona, passed the final Theoretical Examination of the Sibpur Civil Engineering College. Both were Government of India architectural scholars for three years, part of which period they devoted to the study of Muhammadan architecture under a qualified architect.

(2) Postings are decided upon in accordance with the special needs of the several circles, which may, from time to time, require to have two officers attached to them. Of the three cases referred to, the postings of two architects in the Western Circle and of two officers with scholastic qualifications in the Central Circle were purely temporary arrangements ; the former was required in connection with the training of a junior officer, and the other resulted from the taking of disciplinary action against an officer of the Department. It is not a fact that two architects have been or are employed in the Agra Circle.

**PLACING OF MUHAMMADAN MONUMENTS UNDER HINDU OFFICERS.**

450. \*Maulvi Muhammad Yakub : (a) Will Government please state how often they have placed the charge of Muhammadan monuments under a Hindu Officer and of Hindu monuments under a Muhammadan Officer since the inception of the Department ?

(b) Have Government ever considered the desirability of dividing the work between Hindu and Muhammadan Officers where such officers exist in any one circle so that they may look after their monuments independent of each other ?

**Sir Frank Noyce :** (a) Such postings have often been made and necessarily so, since each circle contains monuments of all kinds, pre-historic, Hindu, Muhammadan, Buddhist, British, etc.

(a) On careful consideration the suggested arrangement is neither desirable nor practicable.

**SUPERSESSION OF SENIOR INDIAN OFFICERS OF THE POLICE FORCE IN THE NORTH WEST FRONTIER PROVINCE.**

451. **\*Mr. Muhammad Ismail Khan :** (1) Are Government aware that great discontent is prevailing among the Indian Officers of the Police Force in the North West Frontier Province owing to a large number of junior officers superseding senior men ?

(2) Will Government be pleased to place on the table a statement showing :

- (a) the names of the junior Police officers who have superseded senior men in that Province ;
- (b) the dates of commencement of their service ;
- (c) the special reasons necessitating the supersessions ;
- (d) the names of the senior Indian Police Officers who have been superseded ;
- (e) the dates of commencement of their service ; and
- (f) the special reasons justifying their deprivation from promotion ?

**The Honourable Sir James Orerar :** (1) No.

(2) Government do not consider that it would be in the public interest to lay a statement on the table containing the information asked for. Nor are they prepared to state the reasons necessitating the selection and supersession in particular cases, as promotions are made after considering the personal records of officers, which are confidential.

**CONSTRUCTION OF A MOTOR ROAD BETWEEN THY AND NATHIA GALI, AND GRANT OF FACILITIES FOR THE ERECTION OF BUNGALOWS AND SHOPS AT NATHIA GALI.**

452. **\*Mr. Muhammad Ismail Khan :** (1) Will Government be pleased to state :

- (a) the special reasons which have so far prevented Government from constructing a motor road between Thy and Nathia Gali, and
- (b) the special reasons which have so far necessitated the deprivation of the public of the North West Frontier Province from building bungalows, houses, shops, etc., for residential, trade, and other purposes in the Nathia Gali hills similar to those in other hill stations in India ?

**Sir Denys Bray :** (a) Lack of funds and the greater need for other roads of greater importance.

(b) The scarcity of possible building sites most of which are already taken up.

**COMMUNAL REPRESENTATION IN GOVERNMENT SERVICE IN THE NORTH WEST FRONTIER PROVINCE.**

453. \*Mr. Muhammad Ismail Khan : (1) Will Government be pleased to state if it is a fact that no proportion of communal representation in Government service has yet been fixed by the Local Administration in the North West Frontier Province, notwithstanding the fact :

- (i) that in November, 1925, the gentry of Peshawar and Kohat Districts had submitted memorials to the Local Government on the subject, and
- (ii) that the Honourable the Chief Commissioner had, in reply to a provincial address, declared in November, 1925, that he contemplated to fix a proportion ?

(2) Will Government be pleased to state the reasons which necessitated a departure to be made in that province from the established policy of Government generally adopted by all Local Governments in India ?

Sir Denys Bray : With your permission, Sir, I will answer this and the next question together. Both have been referred to the Local Administration and the information asked for will be sent to the Honourable Member in due course.

**UNEMPLOYMENT OF EDUCATED MOSLEMS IN THE NORTH WEST FRONTIER PROVINCE.**

†454. \*Mr. Muhammad Ismail Khan : (1) Will Government be pleased to state if it is a fact :

- (a) that the principal residents of the District of Hazara in a public meeting held on the 16th August, 1929, in the Juma Mosque at Abbottabad, unanimously signed an application addressed to the Honourable the Chief Commissioner, dealing with the question of unemployment and its remedy and brought to his notice the accumulation of thousands of Matriculates and others in the district who cannot secure Government service owing to the preponderance of non-Muslims and non-residents of the province in Government offices in the district, and requested him to fix a proportion of communal representation in Government service in the province, and as suggested by the Industrial Officer, whose services had been borrowed from the Punjab to submit a report regarding the present industries in the province, to open industrial schools in the country ; and
- (b) that similar applications were also submitted by the residents of other districts to the Local Government on the subject ?

(2) If answers to part (1) are in the affirmative, will Government be pleased to state whether the legitimate demands of the people of the Province have been considered and acceded to ?

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†For answer to this question, see answer to question No. 453.

### EXCESSIVE PREVALENCE OF TUBERCULOSIS IN ABBOTTABAD.

455. \***Mr. Muhammad Ismail Khan** : (1) Will Government be pleased to state if it is a fact :

- (a) that the Cantonment of Abbottabad has been infested with tuberculosis for some years ;
- (b) that a large number of tuberculosis patients come to Abbottabad from different parts of the Punjab and North West Frontier Province every year in the summer, and rent houses and mix with the people in the town without any precautionary measures being taken by the civil and medical authorities there to have the houses occupied by them thoroughly disinfected, or to enforce some sort of restrictions compelling the patients to live in a particular area specially provided for them as a sanatorium with a view to check the spread of the disease in the town ?

(2) Do Government intend to have a house to house search made in the towns of Kohat, Bannu, and Dera Ismail Khan, as was done in Peshawar, and declare the extent to which the disease exists therein at present ?

**Sir Frank Noyce** : The necessary information has been called for and will be supplied to the Honourable Member on receipt.

†456.\*

### COMPLAINTS AGAINST THE HONORARY MAGISTRATES IN THE PESHAWAR TAHSIL OF THE PESHAWAR DISTRICT.

457. \***Mr. Muhammad Ismail Khan** : (1) Is it a fact that there are four Honorary Magistrates, with powers under section 30 of the Code of Criminal Procedure, in the Peshawar Tahsil of the Peshawar District ; and one with First class powers ? Is it also a fact that two of them are father and son, and two others uncle and nephew ?

(2) What are their qualifications, and does any one of them speak English ?

(3) Is it a fact that previous to their becoming Magistrates one of them was a Sub-Inspector of Police, another a Jamadar in a Militia Corps, a third a Subedar in the Frontier Constabulary ?

(4) Is it a fact that all these Magistrates try the cases which occur in the areas in which they and their relations reside and have their vested interests ?

(5) Is it also a fact that one Magistrate has, since his appointment, purchased a lot of landed property within the area under his jurisdiction ?

(6) Have Government received complaints from people residing in those areas against the abuse of their powers by the Magistrates ? If so, what action has been taken ?

(7) Does this system prevail any where else in India ? When was it introduced in the North West Frontier Province, and when in each district ?

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†This question was withdrawn by the questioner.

(8) Is it a fact that all these Magistrates hold their courts in their villages, which are at inconvenient distances from Peshawar, and that under-trial prisoners are marched from and to the headquarters every day handcuffed and heavily fettered ?

(9) Is it a fact that proposals have been made to make these Magistrates hold their courts in Peshawar Cantonment ? If so, why has no action been taken so far ?

**Sir Denys Bray :** With your permission Sir, I shall answer questions Nos. 457 to 460 together. I have called for the information and will impart it to the Honourable Member later.

**REFUSAL OF A FIRST CLASS HONORARY MAGISTRATE IN THE PESHAWAR DISTRICT TO TRY CASES IN A LOCALITY OTHER THAN HIS OWN.**

†458. **Mr. Muhammad Ismail Khan :** (a) Is it a fact that one Honorary Magistrate, First Class (Arbab Sher Ali Khan) was till recently in charge of cases occurring within the area in which he lived ?

(b) Is it also a fact that arrangements were made by the Deputy Commissioner, Peshawar, that he should try cases of a different locality from his own and that the said Magistrate has declined to work ? If so, why ?

(c) Does this system prevail any where else in India to the extent to which it has been recently extended in Peshawar ?

**GRANT OF HONORARY MAGISTERIAL POWERS IN PESHAWAR CITY TO A CAPTAIN IN THE INDIAN ARMY.**

†459. **Mr. Muhammad Ismail Khan :** (a) Is it a fact that a Captain of the Indian Army in active service has recently been given honorary magisterial powers in the Peshawar city as a member of the local Bench ?

(b) What place is supposed to be his headquarters with respect to his military duties, and where does he ordinarily reside ?

(c) How does he perform his magisterial work ; and does it not interfere with his military duties ?

(d) Is there any other example of this type in the rest of India ? If not, what special reasons were there to burden this officer with double duties ?

(e) What are his qualifications for his magisterial work ?

**TOTAL NUMBER OF HONORARY MAGISTRATES IN THE NORTH WEST FRONTIER PROVINCE IN CERTAIN YEARS.**

†460. **Mr. Muhammad Ismail Khan :** (a) Will Government please state the total number of Honorary Magistrates in the North West Frontier Province and their powers in each case, in 1901, 1919 and 1929 ?

(b) If there is any increase, are there any special reasons for it ? If so, what ?

†For answer to this question, see answer to question No. 457.  
LCCPB(LA)

**PERIOD FOR WHICH THE FINANCIAL COMMISSIONER OF RAILWAYS IS APPOINTED.**

**461. \*Mr. K. C. Neogy :** (1) Will Government be pleased to state what is the period for which the following officers of the Finance Department are appointed :

- (a) The Secretary, Finance Department,
- (b) Financial Adviser, Military Finance, and
- (c) The Financial Commissioner of Railways ?

(2) If the period in the case of the Financial Commissioner of Railways is not the same as for the others, will Government be pleased to state the reasons for the difference ?

**The Honourable Sir George Schuster :** (1) (a) and (b). Three years in each case.

(c) No period has been fixed.

(2) The omission appears to have been accidental, and the question of fixing a period of tenure is now under consideration.

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**ELECTION OF A MEMBER TO THE STANDING FINANCE COMMITTEE.**

**The Honourable Sir George Schuster** (Finance Member) : I beg to move that this Assembly do proceed to elect a Member to the Standing Finance Committee to fill the vacancy caused by the resignation of his seat on the Assembly by Colonel J. D. Crawford.

The motion was adopted.

**Mr. President :** I may inform the Members that for the purpose of election of a Member to the Standing Finance Committee, the Assembly office will be open to receive nominations up to 12 noon on Saturday, the 14th September, 1929, and that the election, if necessary, will be held in this Chamber on Monday, the 16th September, 1929.

The election will be conducted in accordance with the principle of proportional representation by means of the single transferable vote.

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**STATEMENT OF BUSINESS.**

**The Honourable Sir James Crerar** (Leader of the House) : With your permission, Sir, I should like to make a statement as regards the probable course of Government business in the week beginning September, the 16th. Honourable Members will of course understand that any statement which I can make at the present moment must be liable to be qualified in consequence of the course of the debate on the motion which I am about to move in connection with the Bill to amend the Code of Criminal Procedure. The first item of business on Monday, the 16th, will be the holding of the election to fill the vacancy on the Standing Finance Committee. Thereafter, the Honourable the Law Member will move for the passing of his two Bills in connection with the amendment of the law relating to Transfer of Property, with which the House has been concerned this week. On the motion that each of these Bills be passed,

formal drafting amendments consequential on amendments already accepted will be moved. Thereafter, a Railway Supplementary Demand will be placed before the House. Such Government time as is not required on Monday, the 16th and Wednesday, the 18th for the transaction of Government business will be made available for the continuance of the proceedings on the Child Marriage Bill of Rai Sahib Harbilas Sarda.

## THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

**The Honourable Sir James Crerar** (Home Member) : Sir, I move that the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose (Insertion of new section 540-B) be taken into consideration.

I should like at the outset to express the deep sense of regret with which Government find themselves compelled to bring this Bill before the House. I cannot affect to deny that the Bill is one which may naturally provoke a considerable amount of controversy, and I hope the House will believe me when I say that Government would have been glad if they had been able to refrain from moving in this matter, which, as I say, will be naturally one of some controversy, as it is very far from their desire to do anything which might in any way disturb the harmony which has so fortunately prevailed, in spite of natural differences of opinion on some specific matters which have come before the House, during the course of this Session. It is only a very strong compulsive sense of duty which has brought Government to this decision. They felt that one of their gravest responsibilities was involved and that, whatever the result might be it was impossible for them to decline that responsibility. They were desirous, at the same time, to take the earliest possible opportunity to ask, as I submit they are entitled to ask, the House also to take its own share in that duty and in that responsibility. Some time ago, the probable necessity of seeking some such remedy as is proposed in this Bill became apparent. The situation which set up that possibility was examined from day to day and from week to week with the greatest care and the greatest anxiety both by the Government of the Punjab and by the Government of India. At one time, there were some grounds for hope that the particular contingencies which were apprehended might cease to exist. Unfortunately these hopes, in spite of the most consistent efforts on the part of the Local Government immediately concerned in this direction, have, in the end, been disappointed, and we have taken the earliest opportunity, since that became clear, to lay this measure before the House. The circumstances I have referred to have brought to light the fact that there is a lacuna in the criminal law ; that contingencies may arise, and indeed have arisen, for which that law does not provide, and that the lacuna to which I have referred is not merely a theoretical one but one which has received a definite and practical illustration. Now, Sir, in what I have to say, I shall not even approach the fringes of any thing which can be regarded as a matter which is *sub judice*. The measure which I have laid before the House has no reference whatsoever to, and has no possible bearing whatever upon, the merits of any trial now pending or any that may hereafter arise. It is a general proposition. It relates to a point of criminal procedure which has no possible relation to the guilt or innocence of any accused person.

[Sir James Crerar.]

Now, Sir, I must concisely inform the House what are the circumstances to which I have already referred. I will quote, in the first instance, a passage from an order passed by the High Court of Lahore on an application which was made to them to which I shall have subsequent occasion to refer. They say :

“ The Magistrate is conducting an inquiry into various serious charges under section 302 read with sections 109 and 120-B of the Indian Penal Code and also under sections 121, 121-A, 122 and 123 of the Indian Penal Code against sixteen persons.”

Those charges, I need not remind the House, are charges of murder, of conspiracy to murder, of waging war against the King, of conspiracy to do so, and other very grave charges. The trial therefore was one of very great importance. Now what happened was this. Before the actual commencement of the magisterial inquiry, two of the accused entered upon a hunger-strike. Subsequently thirteen others of the accused, at various times, also entered upon a hunger-strike. Moreover, though the defence in this case was at one time entrusted to eight counsel, the briefs of those counsel were withdrawn and at one time no less than thirteen of the sixteen accused were on hunger-strike and incapable of appearing before the court. In these circumstances, an application was made to the High Court, Lahore, to authorise the inquiring Court to appoint counsel for the accused in order that section 540-A of the Criminal Procedure Code might apply. The High Court in their order, in which they carefully examined the law, found that it was not in their power to authorise the Court to appoint or themselves to appoint any counsel without the consent of the accused. That, then, may be taken as an authoritative statement of the law as it stands. In consequence of this, the trial, which is as I say a very important trial and in which 400 witnesses have already been cited and a large number more have yet to be cited, has been unable to proceed and is now unable to proceed. Well, Sir, I anticipate that one of the first questions that will be asked of me is that, before Government proceeded to seek a remedy by an amendment of the law, “ was there no other possible solution which might have been attempted ? ” I can only suppose that question to mean, ought not Government in these circumstances to comply with the demands of the accused, who decline to be represented by counsel, and who have rendered themselves incapable of appearing before the Court ? Now, I wish to say, in the first instance, that it is my sincere and genuine belief that the local authorities have been throughout actuated by a very genuine desire to terminate a state of affairs which, whatever the grounds and whatever their consequences may be, is a state of affairs which no one can fail to deplore. The local authorities, both the jail authorities and the Punjab Government, have done all in their power to approach the matter from that point of view. But they have not been successful, and the question now arises—a question on which I must be perfectly frank with the House—“ What were the demands made by the accused persons in this case, and what were the reasons why the Punjab Government, with whose conclusions the Government of India entirely concurred, were unable to comply with them ? ” Well, Sir, the original demand made in justification of the course taken by the accused was that “ political prisoners ” should receive certain preferential treatment : and we were left in no manner of doubt as to what was meant by “ political prisoner ”. By a “ political prisoner ” was clearly meant, not only any person charged with, but

also any person who had been convicted of, any criminal offence, whatever its character, if he claimed that his motive was of a political character. It is impossible to have any misconception on that point, because two particular cases were quoted as instances of political offenders. The first was the well-known Lahore Conspiracy case of 1915 and 1917 and the other was the Kakori Conspiracy case.

Now I must ask the House to bear with me for a few minutes while I remind them of some of the salient characteristics of those two cases. In the first, that is to say the Lahore Conspiracy case of 1915-1917, besides a number of attempts at dacoities, there were five dacoities committed by the conspirators in 1915. In the first of these, the dacoits assaulted a number of villagers and brutally murdered one of them. In another, bombs were thrown, one of the villagers was killed, and a number of them were seriously injured. In the remaining dacoities, all the dacoits were armed with pistols and other dangerous weapons. Besides these, a number of murders were committed in pursuance of a conspiracy. A sub-inspector was shot dead and a head constable was seriously wounded and other murders were committed at Anarkali Bazaar, Lahore, and there were other murders at Jagatpur, Padri and Walla Bridge. In the Kakori Conspiracy case, four dacoities were committed in pursuance of this conspiracy (Bamrauli, Bichpuri, Dwarkapur and Kakori). Fire-arms were used in all. At Bamrauli one villager was shot dead and several others received bullet wounds. The dacoits decamped with loot worth about five thousand rupees. At Bichpuri the dacoits brutally tortured a boy in order to make him reveal the place where valuables were concealed. One villager was shot dead and another wounded. The dacoits not only killed one villager but wounded four others. The fourth outrage was the train dacoity, which resulted in the murder of one passenger and the looting of about Rs. 4,500. I recall these deplorable instances, not because I wish to lay a catalogue of horrors before the House, but in order that the House may clearly understand what the demand was and why we found ourselves unable to comply with it. Offences of that character, whatever their motive may be alleged to have been, are offences which cannot possibly be regarded as specially venial offences. It is impossible to make any concession in the case of offences of that character. Nevertheless, the Punjab Government and the Government of India thought it reasonable to make concessions where it was possible, and also to reassure public opinion in the matter. I would remind the House of the communiqué which was issued by the Government of India and the letter which was subsequently addressed to Local Governments by which a re-examination has been instituted of the conditions applicable to under-trial and special class prisoners. The Punjab Government, as the House is already aware, in view of the probable length and the strain of the trial, sanctioned special diet for the prisoners if required on medical grounds. In the case of one accused, whose physical condition was very bad, the Punjab Government made it known that, if an application for bail was made on his behalf, they would not be prepared to oppose it. Advantage was not taken of that announcement. On the contrary, I understand that the primary cause alleged for the very regrettable resumption of the hunger-strike has been that a particular prisoner has not been unconditionally discharged; that is to say, that the prosecution case against him has not been withdrawn. I do not think that any Honourable Members in this House, having regard to the facts

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which I have explained, will be prepared to say that the Government of the Punjab were unreasonable on that point or that they could take any other course.

I do not wish to detain the House at any undue length, and I must content myself, at any rate for the present, with that summary statement of the facts. But the result has been a complete dead-lock, a paralysis of justice. There is the further probability or, at any rate, the very likely possibility of other cases in future being affected in the same manner. I would also like to lay before the House this consideration, that in a case of this kind where a large number of accused are concerned, a certain number of them may not adopt this particular expedient, which has so far resulted in holding up the course of the trial. These co-accused may be persons who may perhaps have a reasonable hope of acquittal or who, at any rate, may have reason to hope, if they are convicted, that the punishment inflicted upon them may not be very severe. But surely it is an injustice to them that their opportunity of having a judicial pronouncement on their guilt or innocence should be indefinitely delayed ?

Now, Sir, I turn to the remedy that this Bill, in the state of affairs which I have described, proposes. It is this, that if any accused person, by his own voluntary act, is incapable of appearing before the Court and declines to be represented by counsel, the Court has a discretion, in the special circumstances, to dispense with his presence. I would, however, particularly invite the attention of the House to the proviso at the end of the Bill, the effect of which is practically, to all intents and purposes, to eliminate retrospective effect from the Bill. That is to say, if this Bill is enacted, the Magistrate will be unable to pass an order unless the accused person has repeated the act or course of conduct, after the commencement of the Act, which has rendered him incapable from appearing before the Court. Now, a point which I should particularly like to emphasise, because I feel there has been some misapprehension with regard to it, is this, that, by this Bill, Government do not seek in any way whatever to enlarge the executive powers. The power which this Bill will confer will lie entirely within the discretion of the Court, and over that discretion the Executive Government have no control whatever. However, I understand that a feeling is entertained in some parts of the House that it would be an improvement of the Bill if it were provided that a reference, instead of being made to the Court of the Magistrate, should be made to the High Court. If that feeling is generally held, I myself will be prepared to accept some provision of that character, but I would like once more to emphasise my point, that this Bill in no way extends or enlarges the executive powers of the Executive Government.

I imagine, Sir, that it may be contended that this Bill traverses some general principles of criminal jurisprudence. Sir, I submit to the House that the first and most fundamental rule of criminal jurisprudence is that the law shall prevail, that in every civilised country, every man is entitled to the protection of the law, and that every man who is accused of an offence shall be called upon effectively to answer it. I submit that there is nothing in this Bill which is anything but an affirmation of that principle. It is, I submit, the duty of every man to obey the law, and it ought to be his duty, as it is his interest, to support it. The rule of law

is essential to every civilised country and the rule of law must be effective. I maintain that the provisions of this Bill are not only in conformity with that principle, but merely re-affirm and support it. It is subject to that principle that other salutary rules of criminal law exist. It is a salutary principle that every man shall be deemed innocent until he is proved guilty and that principle obviously implies and pre-supposes effectual means by which his guilt or innocence may be established. It is also a provision of the law, that the accused person must have a fair hearing in a fair trial, and for that reason he must be represented either in person or by counsel. The intention of the present law, I submit, is to give those remedies to the accused. If he voluntarily deprives himself of them, then surely the case bears a different aspect. It is that aspect of the case that I ask the House to deal seriously with. It must be remembered that in any criminal proceedings, there are always two parties, the accused person and some other aggrieved person, the complainant, or the Crown, representing the people. Both parties are equally entitled to justice. It is to meet that end that this Bill is desired. I shall doubtless be told that this legislation is unprecedented. I submit also that the circumstances in which the necessity arises are unprecedented. It will probably be argued that this legislation is proposed on the basis of only a single case, but I should like to point out that here a definite *lacuna* in the law has been proved to exist; there is a definite defect in our criminal procedure. If conduct directed to exploit that defect is allowed to succeed, there is little doubt, and there have already been definite indications, that the example will be followed in many cases in future to the gravest detriment of the public interest, amounting to nothing less in serious cases of this kind than the paralysis and impotence of the law.

Now, Sir, I have submitted this matter to the House as one of urgency. I myself could not contemplate, without the gravest apprehensions, the consequences of any long delay in enacting this measure. As I have already informed this House, the probable necessity of undertaking this legislation was present to our minds several weeks ago. We held our hands as long as we had any hopes that it could by any conceivable turn of events be dispensed with, and we have now placed it before the House. We have done so in compliance, as I say, with a very keen sense of our own duty in the matter, though we should have been very glad to be relieved of this necessity. It is not only the Executive Government of the country which is responsible for the due administration of justice. The responsibility of the Legislature is not less great.

I ask this House to deal with this matter in an entirely unprejudiced manner, and to recognise that the Government are confronted with a situation for which some solution must be found. We have anxiously explored every possible solution, and we have come to the conclusion that no solution other than that propounded at present is possible. On that basis, I venture to appeal to the House to treat this matter dispassionately, without prejudice, with a fair recognition of the facts. The matter, I say, is one which we are bound to regard as urgent, and it is for that reason that I move this motion for consideration of the Bill. But if a feeling prevails in the House that a more proper course would be to refer this Bill to a Select Committee reporting at an early date, as I understand there is an amendment to that effect on the agenda, if that is the

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wish, then I can assure the House that Government will be prepared to accept it.

Let me once again renew my appeal to the House to deal with this matter without prejudice, impartially and with a fair and just recognition of the facts which have compelled Government to lay it before the House. If it will do that, I have every hope that this measure will be approved by the House and duly enacted. (Applause.)

**Mr. President :** The question is :

“ That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose (Insertion of new section 540-B), be taken into consideration ”.

**Mr. N. O. Kelkar** (Bombay Central Division : Non-Muhammadan Rural) : Sir, I beg to move :

“ That the Bill be circulated for eliciting public and legal opinions thereon ”.

Sir, the Honourable the Home Member himself admitted at the outset that this was a controversial Bill. Of course, he has given his own version of the controversy and his own side, and he should therefore be prepared to hear our version, our side of the controversy over this Bill. The amendment that I have moved is, to put it frankly, a dilatory motion in the sense that I do want time and more time for this Bill. I want time for this Bill for two reasons. In the first place, this Bill starts, for the first time, a very great question of principles of jurisprudence. Therefore we cannot proceed with the Bill in this offhand fashion. I am of opinion that a large mass of legal and judicial opinion will have to be collected and laid before this House before we could proceed with this Bill. That is my first reason. My second reason, and perhaps an equally important reason, is that I want to get this Bill off from its associations with the Lahore case and the present strike. Of course, as the Honourable the Home Member has said, this Bill has no bearing whatever upon the merits of the Lahore case. I quite admit that. Throughout my speech, if I make a single reference by a single word to the merits of that case, whenever I shall be speaking of the Lahore case, I may be supposed to have more in my mind the particular strike of the accused in the Lahore case than anything else.

Sir, the reason why I want time for this Bill is this. Under other conditions, in other circumstances and in other times, I think in one aspect of the view, there is something to be said in favour of the Bill. I am giving my opinion only as a layman, and it is after all a tentative opinion for the moment. But in one view of it, I think the Bill is not a bad one. It is for this reason. If for the moment one can forget the Lahore case and the strike, then I think this Bill gives some measure of the much-needed relief to certain imaginable or conceivable co-accused in cases where the trial is unnecessarily prolonged not for their own fault, but for the fault of the other co-accused.

We all know that adventure makes strange bed-fellows, but so also does misfortune ; and we know that in a number of

12 Noon. cases, owing to the excessive zeal of the police, a number of accused, innocent people, are harvested together, put upon a joint trial, and then what happens ? In many cases it is found that the accused have no common defence ; each one wants to defend himself in

his own way and quite rightly and legitimately. And in the end we find that sometimes some of the accused are let off. Here is a case in which there is no common purpose, no common binding between the different accused, and yet, owing to the action of Government and the police, these unfortunate people are brought in, and if in such a case some one of the accused does voluntary acts to disable himself from attendance from the court, it naturally prejudicially reacts upon the interests of the other accused. And I will mention instances of cases like this. I will mention gang dacoity cases, cases of riots, cases of unlawful assemblies and so on. These are typical cases of prosecutions in which a number of people are indiscriminately put up together. And therefore in my view, if this Bill were passed and put on the Statute-book, it might give indeed a measure of relief in certain conditions to co-accused. And I venture to say that if this Bill, from the pure judicial point of view and conception, had been brought before this House a few months earlier, or if it is again brought up a few months later, it will certainly stand a better chance than it has to-day. But after all, I give my opinion as a mere layman, and my lawyer friends say that my view is not right. The Bill, whenever it is brought, will necessarily offend against a first class principle of jurisprudence, namely, the accused must be present in court and must hear his trial. We should really like to know what are the provisions on this point in other countries in cases of a similar nature. We should like to have the opinions of the Bar Councils, of pleaders and barristers and the legal profession generally, and also of the courts. I know that the Bill has arisen out of one particular decision of the Lahore High Court, but my view is that, even if this Bill were to be put tomorrow before the Lahore High Court, I am not quite sure that the Judges would say that the principle of this Bill is quite right. I do not think they have specifically suggested this thing which is contained in this Bill, though of course they gave their decision on other matters in this particular affair.

Now, Sir, my second point is this. I do not want Government to take advantage of this Bill for this particular case. A number of months passed after the accused in this case were arrested. Government did not proceed to try them for a number of months. That means that they do not care so much for time. They may as well wait for a few months more,—why not? After all, the struggle of these hunger strikers is such a struggle that it is bound to end one way or the other very soon; it cannot be prolonged indefinitely. But it may be said here that Government are in a hole and they find themselves in difficulty. To that my simple answer is that the Sphinx must solve its own riddle; who else can read it? Let the prosecution stew in its own juice. I have absolutely no sympathy for the prosecution in this matter. If the prosecution has taken a few months already, let it take a few months more and nothing will be lost thereby. But I am sure that Government cannot come to this House and seek a remedy from the legislature in this matter. But then I am not quite thoughtless in this matter, for I can suggest to Government some concrete proposals for getting out of this difficulty. As I have said they can stay their hands for some time,—that is one solution. By some efforts eleven of the accused have already been successfully weaned out of the hunger strike. Who knows that by efforts and in time, if some concessions are made to the accused, they may not give up their

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hunger strike and take their trial ? That is a possibility, but that can be achieved and realised only if Government stay their hands and postpone the prosecution for some time.

My second suggestion is, split up the case, and that is a thing which is not unheard of. There are about 17 accused in this case and it is not necessary that all of them should be put up for trial together. When there are absconders in a particular case, Government do split up the trial, and that may be done in this case too. It may be said that these hunger strikers have brought on the strike voluntarily, but my suggestion to Government is to treat them as absconders and proceed with the case against those who are in a position to be brought to court. And there is enough material to go on with the case. To a useful question put yesterday by my friend Mr. Ganganand Sinha, a statement was laid on the table of the House by the Honourable the Home Member. I have scanned that statement and what do I find ? Out of the 17 accused, 11 are not hungerstriking at the present time. Two have already been sentenced to transportation,—Bhagat Singh and another. What more do you want to get out of them, unless you want to humiliate them by putting a stigma on their heads and sending them to the scaffold ? Then, one man is already on the point of death, and even the medical men have given up his case as hopeless. So how many remain ? Only three ; and as I have already said, if efforts are made, surely there is a chance of these three people also being persuaded to follow the example of the other eleven accused and take their trial after giving up the strike. As I have said, the struggle of these hunger strikers cannot go on endlessly ; it must come to an end sooner or later. It is a struggle between two forces. There is the force of the will power of these people who are on hunger strike, and on the other hand there is the force of the medical people in the jail who are trying their best to forcibly feed these people. And I was surprised to find from the statement that, though some of the accused have gone on hunger strike for 80 days and more, they have lost in some cases only 14 lbs. and in some cases only 20 lbs. in weight. That is inexplicable to me ; but my point is this : that one of the two forces must win in the end. Supposing the force of hunger strike succeeds, those people will die and get out of this world and Government will be rid of them. Supposing on the other hand that the force of forcible feeding succeeds in the end, it will end in these people being produced before the court. Therefore, this struggle, I contend, is not a struggle that will go on endlessly ; and therefore there is no necessity in my opinion for Government to bring in a Bill of this kind at this moment as if all hopes were lost.

Now, Sir, supposing these cases are split up, there may be two cases ; there will of course be delay and there will be expense ; but time is not of the essence of the matter with Government, nor is cost ; and I have suggested that, by withdrawing even at this moment the prosecution against certain of the people, they can get a solid block of people to proceed against in one case. Why cannot they do it ? Take off the case from those who are recalcitrant, who are not reasonable, and the others might be persuaded to give up their hunger strike. Now, Sir, withdrawing cases, even at an advanced stage, is not a thing unknown to Government. Have they not created a first class scandal in Sind by

withdrawing a case after the Magistrate had committed the accused to the Sessions ? They have withdrawn the case within the Sessions court at the last moment. (Maulvi Muhammad Yakub : " Shame "). That is what has appeared in the press : they have withdrawn the case—the fact is there—and let me remind the House that the charge in that particular case was abduction and murder.

**Mr. Abdul Haye** (East Punjab : Muhammadan) : That was done in deference to this House, I believe ?

**Mr. N. C. Kelkar** : Have I said one word of blame of the Government ? I simply want them to follow that example in this particular case. If it was right in that case, let it be followed in this particular case, and let the case be withdrawn against a few of the accused, so that you will get a solid block of people against whom you can go on and finish the case. I have merely stated one argument for not allowing the Government to have this Bill.

**Mr. Lalchand Navarai** (Sind : Non-Muhammadan Rural) : I object to the Honourable Member's statement. How much does the Honourable Member know about that case ?

**Mr. N. C. Kelkar** : It is not necessary. Nobody has corrected me in so far that the case has been withdrawn. It has appeared in the papers.

**Mr. M. A. Jinnah** (Bombay City : Muhammadan Urban) : It has not been withdrawn ; only the Government have decided to apply to withdraw.

**Mr. Lalchand Navarai** : May I state the facts ? An application for withdrawal was made, and the application was considered by the Government, and they ordered withdrawal ; but the Public Prosecutor, Karachi, was against withdrawal. He however applied to the court for a withdrawal. The court said that it was in the power of the court to allow withdrawal or not, and therefore on the 2nd September, when an application was made, the court kept it for orders till the 9th September, and it is not known whether the court has allowed the withdrawal or not,

**Mr. N. C. Kelkar** : My friend appeared in the case and of course he knows better about it.

**Mr. Lalchand Navarai** : I was not the pleader during the withdrawal application.

**Mr. N. C. Kelkar** : However that may be, my point is this : I have simply suggested the withdrawal of the case which is not impossible or a thing not to be contemplated. I do contend that the case should be withdrawn against a few who are recalcitrant, and the case may be proceeded with against those who have ceased to hunger-strike ; the case against them can go on.

I have given two reasons. I come now to the third and, in my opinion, the greatest reason for not allowing Government this Bill ; and my reason is that I cannot allow the strikers to be made victims of this Bill. I cannot allow these present strikers, at any rate, to be made victims of this Bill which has arisen out of their own strike. It is due to them that they should not be made the first victims of this Bill, whoever else may be at any other time. The Bill may pass after the end of

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this case and prove useful, as I have said, in other conditions. But it is unfair to pass this Bill while this strike is going on. And why do I say that is due to them? I shall give my reasons as to why they should not be made the first victims of this particular Bill. This House will remember that the hunger strikers have raised a first class political issue in the matter of the jail treatment of prisoners and racial discrimination. Now, how have they done it? Let the House again remember this. How have they raised this first class issue? Not like ingenious lawyers sitting in their arm chairs, in their consulting rooms comfortably; not like dilettante or amateur theorists in criminology sitting in their comfortable libraries. ....

**Mr. M. A. Jinnah :** Nor like journalists in their editorial sanctum !

**Mr. N. C. Kelkar :** No ; in none of these ways has this first class issue been raised ; but they have raised the issue under the hardest of jail conditions. This must be remembered to their credit, and therefore I say that they ought not to be made victims of a Bill of this type.

Now, Sir, coming to the hunger strike itself, I quite admit that the merits of a hunger-strike may be debatable ; there may be two sides to it. However, is a hunger strike suicidal? Certainly it cannot be called suicidal, because we know that Mahatma Gandhi himself went on hunger strike for twenty days and would not take any food during the period. Mahatma Gandhi is not a sinful man to go and commit suicide. So it must have another aspect, and therefore I contend that it cannot be called suicidal. (*An Honourable Member* : "That was penance".) Call it strike, call it penance ; you may describe what Mahatma Gandhi did as penance and you may describe the act of these people as a hunger strike ; but after all hunger is common to both cases ; therefore you must not apply the description of "suicidal" to this strike.

My next point is that, even supposing it is suicidal, you must remember that it is not for avoiding the trial. If the strike was intended to avoid the trial, I could understand that ; but in this case, the strike is not intended to avoid the trial, but as a protest—a positive, practical, active protest—against certain racial discriminations and bad treatment in jail. They are fighting a political battle of this Assembly, and why do I say that their object is not to escape this trial? Because apparently from the accounts, some of these fellows seem to be very bold. It is not as if they shirk the consequences of the trial ; some of them are prepared for, who knows what may come, transportation for life, or even to go to the scaffold. So in the case of such bold people, we cannot presume that they resort to the hunger strike simply to avoid the consequences of this trial. They do it with some definite objective. It is not mere sentiment that is at the back of this strike ; it is no mere morbid sentimentality, but there is some clear object and purpose and also acute intelligence behind the strike. After all, you and I know that a hunger strike is no joke, and therefore we need not scoff at it, much less should we censure or condemn it. Take the strikers at least as seriously as they take themselves. The fact is that they are prepared to give their lives ; but mind you, only they are concerned to sell their lives as dearly as possible. They want to get as much out of this Government by their hunger strike as it is possible for them to get even under these hard conditions. What

is the price they demand ? They do not want acquittal from the case, or escape from the case. What they demand is recognition of the self-respect of political prisoners engaged in a national struggle. That is the price they demand for their strike ; and in these circumstances, how is it possible that they should fail to win sympathy from the public and from the Members of this Assembly ? Every sort of suffering in this world is bound to win sympathy. Take the case of Terence MacSwiney. Ultimately he died, but did he not win the approval, or at least the sympathy—not the approval but the sympathy—of the whole world ? And did he not, along with that sympathy, also push forward his own cause of Irish freedom ? The world knows that. In this connection I read in yesterday's *Times of India* a leader about it. It runs as follows : " When MacSwiney died, Archbishop Mannix and the other Roman Catholic clergy joined the long procession from Southwark to Euston Station, the clergy authorised the solemn Requiem in Cork Cathedral. "

If it were a case of suicide, sinful suicide, then, these people would not have expressed any sympathy for the man. They were aware that he did not undergo a hunger strike for any selfish purpose, but had at the back of his mind a great national purpose, and therefore such great respect was shown to him. As I have said already, in the end some people will be found guilty and some people will be found innocent, but it is also possible, and you must take that fact into consideration, that, whatever happened at Lahore,—I am not referring to the facts, part of it may relate in the long distance to what happened to Lala Lajpat Rai....

**Mr. President :** Order, order.

**Mr. N. C. Kelkar :** All right, Sir. My point is that, if Government are expecting any sympathy from us for the Bill, I will say this, and I will refer to a thing which happened in this House at any rate. When a first class full dress debate was raised in this House over the attack on Lalaji, there was not one single man from the Government Benches who expressed any one word of censure about the conduct of the police who beat Lalaji. (*An Honourable Member :* " Shame ".) And why should they expect now a word of censure from us, or a word of condemnation or criticism of the hunger strikers in the Lahore case ? Government say : " You are sensible people, you are reasonable people, you know that the law must go on and so on. " We tell them at once that they will not get one word of sympathy from us, but certainly words of sympathy will be addressed from this House to the hunger strikers who, as I have said, have raised a first class political issue.

Having said this about hunger strikes, I will say, in a general kind of philosophical way, that it is not for me or for this House to characterise these hunger strikes in one way or the other. We need not deny them the meed, I will not say necessarily of praise, but at least of sympathy, which is due to these brave people, these brave young boys, some of them very fine boys in every sense. Who can fail to sympathise with them in these troubles of theirs ? Now, what is the difference between these people and those who sit in this House ? It may be that they have not our patience and our perception of the realities and the possibilities of the political situation in this country. But, on the other hand, can they not say, " You people in the Assembly have not got our courage and

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our idealism," ?—It is perfectly open to them to say that. Each of us takes his own consequences. They go to jail for their opinions, they also go to the scaffold, and what do we do ? We reap the ignominy of going to the Councils and placidly preaching constitutional agitation for ages in and ages out. Supposing, before the forum of the world, some of these people were present and also some of us in the Assembly were also present there,—you know generally in foreign countries people put to us the question, "You are three hundred millions of people in India. Why don't you win political freedom for yourselves ?" Let each one of us give our answers. We say : "We are preaching, agitating and teaching people constitutional agitation". And what would one of these people say ? They would say, "We have given our lives; we are prepared to give our lives."

**Mr. President :** Order, order. This is hardly relevant.

**Mr. N. C. Kelkar :** All right. I will leave that. But looking at the theoretical aspect of the question, I will say this, that in this particular instance, at any rate, they are trying to solve a first class political issue. As for the Lahore hunger strikers, I do not think we have so far got any first-hand statement of what they want. But fortunately I find in the *Bombay Chronicle* a full statement from another hunger striker, not in the Lahore case but in the Mianwali Jail. And as it contains and gives everything in detail, I hope the House will bear with me if I read a few lines from that statement which is responsibly made before a magistrate. In the first place, he says that he is a follower of Gandhi and a non-violent non-co-operator, and in the end he says that he has not gone on this hunger strike in order to avoid labour. He says he is prepared to do any amount of labour as far as he can. Why did he go on hunger strike then ? He gives his reasons :

"It is a fact that I am on hunger strike since August 4 and the reason for this is that I am not given the food which should be given to me as of right. The political prisoners in this country have a long-standing grievance against the Government that their status as political prisoners is not recognised officially. It is but meet that they should be designated as political prisoners in the official correspondence.

Their second grievance is that a European prisoner, be he a thug, dacoit, or a cheat, is given butter, cake and tea. Fresh vegetables are sent for from the bazars if such are not available in the jail garden. But the case with the Indian political prisoners is quite different. Even if they are special class prisoners, they are not given these facilities. They get wheat and gram, and most ordinary vegetables. They are also supplied oil. . . . . The European wards are airy, well-ventilated and well-furnished and they have separate kitchen and baths attached to them. Compare them with the barracks for Indian political prisoners, which are neither well-ventilated, nor they have got doors to protect the inmates from cold and wind, etc.

The condition of cells for Indian ordinary prisoners is still worse. They are generally damp, dark and dingy and are made to clean urinals and latrines during the night time. The prisoners are compelled to keep drinking water and their religious books in the same cell wherein are placed urinals, etc. These are the cells in which the ordinary political prisoners have to pass their nights even in the months of June, July and August."

Then he gives certain details into which I need not go,—that Indian political prisoners are given *rethas*, while soap is supplied to the Europeans.

He goes on to say :

"It is a pity that while the European prisoners are placed in the Central Jail, Lahore, the special class political prisoners are put in Mianwali, the *Kalapani* of the Punjab.

These grievances have been brought to the notice of the Government many a time before....."

This is the most important—

"These grievances have been brought to the notice of the Government many a time before, but no heed whatsoever so far has been paid to them, and so we have felt compelled to resort to this extreme step of hunger strike till these grievances are redressed in a manner acceptable to the political intelligentsia of the country."

This, in brief, is the statement that was made before a magistrate by a hunger striker, who is on his trial for hunger strike. I do not know what are the facts in that particular case; he may be corroborated or he may not be corroborated. That is a matter for inquiry. But I say independent testimony to these complaints comes from other quarters also, and in that respect I will mention the Report of the United Provinces Jail Committee. There we know that the European Chairman and the Indian members have differed on a number of points. That means that, though the Cardew Jail Committee of 1922-23 did make certain recommendations and did not make certain recommendations and assumed that that was the last word on the subject, I do contend that these present facts show that the issue is a live one even now.

This point has been brought out saliently in the reports and dissenting minutes in the United Provinces Jail Committee's Report by people like Pandit Jagat Narain and others. If the issue was a fanciful one, Government would not have entered upon this inquiry, and the very fact that they have entered upon this inquiry shows that a grievance did exist. They have now asked the different Provincial Governments for a Report. My point is—why did not they do this earlier? Did they not know from the press and other sources that the political prisoners were already suffering from that complaint? Why did they wait till the hunger strikers forced that step on them? They should have done it earlier. From that I conclude that Government find themselves in a difficulty which is of their own creation, and then they have come to the Legislature with a Bill like this. Even this inquiry is a partial success for the hunger strikers. That is my next point. They have raised a first class political issue and to whom is this credit due? Not to us that are sitting in the Legislatures comfortably. We have not succeeded in raising that issue so far, and compelling Government to make this inquiry. Remember that it is the hunger strikers, under their hard jail conditions, that have driven Government to make this inquiry. This partial success is due to the hunger strikers themselves. Now, hunger strike is of course a new method. It is a new method of agitation, and in the present political situation it is not to be discarded simply because it is a new method. In this connection I was amused to find the other day an interesting story written by Mr. G. K. Chesterton. It relates to a Club of Queer Trades. I was amused to find out what that Club could be. I found out this. There was a Club. One of the conditions of the membership was that the candidate who aspired to be a member of that Club ought to follow "an honest living in the first instance. The second condition, and the more important, was that he must have found out for himself a new and original method of earning his livelihood, a method which was not followed by others. That is the point of the story. Taking, this as a parallel, the politicians in India,—the Indian fraternity of politicians—are a club of queer trades. Of course it is not a trade. It is sound practical business, unselfish practical business. Now, in this club of queer trades which was

[Mr. N. C. Kelkar.]

started 75 years ago, we find that, from time to time, political agitators and workers in this country have been finding their own new original methods of agitation, all having at the back of their minds a common object, namely, the winning of political freedom for India. Who started the game? First the loyalists started it with flattery. Then came the moderates on the scene. They invented the method of argument and statistics. They hoped that Government would be persuaded by them. Then came on the scene the neo-extremists, who invented the method of blunt speaking and abuse. Then came the extremists, who invented the method of going to jail within certain limited conditions. Lastly we have now the revolutionaries and people of that type, who have inverted the method of giving their lives by going on hunger strikes. In that way each member of this political fraternity has been inventing for himself a new and original method of political agitation. The whole thing is a club of queer trades. The object is common. What is the use of saying that the hunger strikers are doing something sinful, suicidal, morbidly sentimental and so on? Have any of these critics got the courage these brave boys have got to live under their hard jail conditions and to create such first class political issues with partial success at least? In short my point is that it would be absolutely unfair and scandalous for the Assembly to vote for this Bill at all. Government have themselves created this muddle. We in this Assembly must have the courage to give these hunger strikers at least negative assistance.

**Mr. K. O. Roy** (Bengal : Nominated Non-Official) : Sir, I beg to move the amendment that stands in my name :

"That the Bill be referred to a Select Committee consisting of the Honourable Sir James Crerar, the Honourable Sir Brojendra Mitter, Mr. D. F. Mulla, Maulvi Muhammad Yakub, Mr. D. C. Stewart-Smith, Mian Muhammad Shah Nawaz, Mr. Fazal Ibrahim Rahimtulla and the Mover, with instructions to report by Monday, the 16th September 1929, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

**Mr. B. Das** (Orissa Division : Non-Muhammadian) : Why did you omit Mr. Kabiruddin Ahmed?

**Mr. K. O. Roy** : He did not offer himself, nor you. I request, Mr. President, that you will permit me to add the name of my Honourable and gallant friend, Colonel Gidney. He is a medical man of great reputation, having practical experience of hunger feeding.

I was greatly relieved to hear Mr. Kelkar. He did not oppose the principle of the Bill.

**Mr. B. Das** : He did not touch it.

**Mr. K. O. Roy** : He thought that there are merits in the Bill and he went on to divide the issues involved into three sections. If he will sit on the Select Committee, the issues could be clearly thrashed out. Now, Sir, I frankly confess that I am not satisfied with the composition of my Select Committee. I invited some of the prominent Members. They say that their objection is to the principle of the Bill. What is the principle of the Bill? The principle of the Bill, as far as I can make out, is this, that the Government seeks power to hold an inquiry or trial when the accused's absence arises from his own voluntary action.

This is the only principle to which most of my Honourable friends on the other side have objection. But, Sir, the point which is uppermost in my mind is that this point which arises out of the whole hunger strike is not an imaginary thing; it has actually taken place. It has shown a grave defect in our criminal law, which it is the bounden duty of this House to remedy ("Hear, hear" from the Official Benches) and if we fail in our fundamental and primary duty, I feel that we as a Legislature have no right to exist here. (Hear, hear.) My friend, Mr. Kelkar, has asked me one very pertinent question: what has been the practice in another country? And he has himself referred to the hunger strike of Mr. MacSwiney. Sir, I have tried to look up the facts, and what do I find? I find that most of the Irishmen who went on hunger strike, did so after conviction. The case that has arisen in Lahore, the merits of which I shall not go into, is without parallel in the history of the world. Will this House deny Government the right to place their case before the House as well as before the Select Committee? Sir, if we deny that right, we shall deny ourselves the elementary right of a Legislature. ("Hear, hear", from the Official Benches.) Then, Sir, I am a great believer in Select Committees. I have served on Select Committees with the Honourable Mr. Jinnah who is not here.

**Mr. Gaya Prasad Singh** : They are like Beecham's pills ?

**Mr. K. C. Roy** : You know, Mr. Gaya Prasad Singh, what Select Committees can do and undo.

**Mr. B. Das** : What about the Public Safety Bill ?

**Mr. K. C. Roy** : You took it to Select Committee and the Committee improved the Bill.

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions : Muhammadan Rural) : Rai Sahib Harbilas Sarda's Bill in its present form is the outcome of a Select Committee.

**Mr. K. C. Roy** : Why not ? Not one but two Select Committees. (Laughter.) Sir, I am a great believer in Select Committees,—and in most countries measures of legislation and important administrative problems are solved in Committees, and not on the floor of the open House.

My Honourable friend, Mr. Rangaswami Iyengar, will not deny it ? (Laughter.)

**Mr. A. Rangaswami Iyengar** (Tanjore *cum* Trichinopoly : Non-Muhammadan Rural) : I should like to know what it is before I deny or accept.

**Mr. K. C. Roy** : You will have your chance. Sir, I believe that, for a Bill of this sort, the best forum for discussion is the Select Committee where Government can lay all the papers. I can recall the Select Committee which, only last cold weather, dealt with the Trade Union Bill. (Mr. K. C. Neogy : And the Public Safety Bill.) They oriented the whole measure, and my friends will not also forget the Contempt of Courts Bill, the Prophets Protection Bill and Leaflets Bill. All these Bills were remodelled not on the floor of the House, but in Select Committees. Sir, Mr. Kelkar wants to elicit political and legal opinion. I ask him one question. Is there anybody more authentic, more representative than this House to give the political and legal opinion that

[Mr. K. C. Roy.]

Mr. Kelkar wishes ? If Mr. Kelkar had complained that he had not got the views of the Provincial Governments and the High Courts, he might be on stronger ground. If he had complained that he had not the opinions of other Judges, he might be on still stronger ground. But when he wishes to elicit political and legal opinion, he cannot find a more authentic body of men than the Members of this House. (Applause.) They are the final and ultimate judges of all legislation ; and speaking for myself, I should sooner rely for political opinion upon the Front Opposition Benches than upon any other body outside the House.

Now, Sir, there is very little for me to say. I do not wish to go into the question of the hunger strike. Hunger strike as a political instrument is an innovation ; and it has been foisted on India. I want the House to realise that fact, and it may extend. So I think it is our duty to look into the defects of the existing criminal law and do our best in Select Committee to model the Bill according to the wishes of the representatives of the people of the country and bring it back before the Legislature. (Hear, hear.) Sir, my position is this, that hunger strike as a political weapon is right enough, but there may be many who have been on hunger strike, who are not probably guilty of a crime, who may be called co-accused and the sooner we can find a remedy for their trial, the better for all concerned. Sir, I have considered this Bill with care, and I have come to the inevitable conclusion that Government have been compelled to bring this Bill before the House under circumstances which have been fully explained by the Honourable the Leader of the House, and every sentence that he has said I know from my experience to be perfectly correct and true.

**Mr. Jamnadas M. Mehta** (Bombay City : Non-Muhammadan Urban) : Then why do you want a Select Committee ?

**Mr. K. C. Roy** : The Select Committee has not only to look into the statement of facts of the cases, but has to examine every detail of the Bill, as Mr. Jamnadas Mehta knows so well. Let us, Sir, brush aside prejudice. It does not matter whether it is a Government measure or a private measure. Let us brush aside all consideration of the case which is now before the public. Let us brush aside the fact whether this Bill will have retrospective or prospective effect. All these considerations can be fully discussed by the Select Committee ; and if some of the Front Benches will agree to serve, I am quite sure that we shall be able to produce a Bill worthy of acceptance by the Front Benches of this House. Sir, I move my amendment. (Applause from Official Benches.)

**Mr. President** : The Honourable Member has added two names, Colonel Gidney and Mr. K. Ahmed ?

**Mr. K. C. Roy** : No, Sir. Colonel Gidney is the only one.

**Mr. B. Das** : Does that mean that you are disowning Mr. Kabeer-ud-Din Ahmed ?

**Mr. Abdul Haye** : Sir, I rise to support the amendment of my Honourable friend, Mr. Kelkar. (Loud applause.) Sir, it is after great deliberation that we on this side of the House have decided to support this amendment. We realise that at this stage we cannot permit the Government to place permanently on the Statute-book of this country a measure of this nature. Sir, our national poet, has said :

*Qarib hai yār roz-i-mahshar chhipegā kushon kā khūn kiunkar,  
'Jo chup rahe, i zabān-i-khanjar luhā pukāreḡ dān kā.*

**An Honourable Member** : What does it mean ?

**Mr. Abdul Haye :** I will render it in English. It comes to this. The poet says that the day of judgment is quite near, and it will not be possible for you to hide your guilt. If the sword with which you have committed the murder will not give evidence, your sleeve stained with blood will expose you. Sir, this couplet was quoted by the Honourable Mr. Justice Mahmood when, sitting on the Bench of the Allahabad High Court, he ruled that, under whatever disabilities an accused person may be, no judgment against him could be passed in his absence. (Hear, hear.) But, Sir, we also realise that at this juncture the Government have got some justification in bringing forward this measure, and we are therefore prepared to examine the question, and we want time for that. The Honourable the Home Member, by virtue of this Bill, seeks to provide for those cases where an accused person has, by his own voluntary act, rendered himself incapable of remaining before the court.

My friend, the Honourable Mr. Kelkar, has suggested a course of action for the consideration of the Government and he says that it is open to the prosecution to split the case into two, i.e., to proceed with the trial of those who are fit to make their defence and are fit to remain in the court, and postpone the case of others who are not in a fit state of health. I understand, the position of the Government is that they do not want to split the case into two. They want to expedite the case by trying it as one case and by proceeding with it forthwith, no matter whether a person is able to remain in the court or not. I will point out, for the information of the Government, that if their object is not to split the case into two.

**The Honourable Sir James Crerar :** It cannot be done for practical reasons.

**Mr. Abdul Haye :** If you say that the case cannot be split into two, you are exhibiting hopeless ignorance of the law. Even if this measure is carried today before 4 o'clock, even if this Bill becomes the law of the land, does the Honourable the Home Member realise that, under the law as it stands, it is obligatory upon the court to split the case into two in such cases? I believe, Sir, that the Government have rushed to this Assembly with this Bill while their mind was in a state of confusion. They have entirely ignored that cases of this nature are already provided for. They have not cared to read the present section 540-A. I will read that section before this Honourable House, and I will show that, in the presence of that section, no legislation of this nature can be undertaken. It would be *ultra vires*. My second point is that it is obligatory upon the courts, under such circumstances, to split the case into two, or to adjourn the entire case—there is no third alternative. The section runs thus :

“(1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court (all the conceivable cases are covered by this section), he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings direct the personal attendance of such accused.”

**The Honourable Sir James Crerar :** If he is represented.

**Mr. Abdul Haye :** Kindly have patience and listen to what clause (2) says :

“(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks

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fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up for trial separately."

So the law as it now stands is that, in a case of this nature, where a man is incapable of remaining before the court, whether by visitation of God or by his own voluntary act, the court has got only two options, namely, either to adjourn the case when the court is of the opinion, that, within a short time the accused will be in a fit state of health to stand his trial, or to order that such an accused be tried separately. Now, if this provision is already on the Statute-book and if you also carry your measure through this Legislature today, your magistrates and judges will be handicapped and they will not be able, in view of section 440-A, to try the case as one case. Under section 540-A, there are only two courses open to them, either to split the case into two or to postpone it.

Now, Sir, we have serious objections against the proposed legislation, and if this Bill is not circulated for eliciting public opinion thereon, it will be our painful duty to oppose it, and oppose it tooth and nail. You say that you recognise that every accused person has got a right to be heard. You further say that you are not taking away that right from him, but that it is he who is voluntarily denying to himself that right. I realise that position, but the law should not be inconsistent. I would cite the analogy of an absconder, a man who, after committing a serious offence, chooses to run away and is not available for he cannot be arrested. Does he not deliberately and voluntarily try to avoid the process of law? Is an absconder in any way better than hunger striker? I maintain, Sir, that a hunger striker may be an honest man, may be a patriot, but surely a man who has absconded is a coward and a dishonest fellow. You have not so far brought forward any measure, you have not asked this Legislative Assembly to make a law that this dishonest and coward absconder should be proceeded against in his absence. (Hear, hear.) If against an absconder you cannot have *ex parte* proceedings, if you cannot pass judgment in his absence, how can you pass judgment against a man who is not in a fit state of health to stand his trial, no matter how deliberately he may have courted that condition?

✓ The law about an absconder is contained in section 512. It authorises the court to record evidence in his absence with a view only to preserve that evidence and no further. When he is apprehended he has got to be brought before the court and the witnesses have to be summoned and examined in his presence, and he is to be afforded an opportunity of cross-examination. Section 512 only enables the court to record and preserve the evidence, and that evidence can only be available in case a certain witness is dead or is otherwise not available. I am perfectly willing to help you if you want to preserve the evidence against the hunger striker to be used in case the witness is not available, but certainly you cannot pass judgment in his absence. It may be said that, in the case of an absconder, why should you pass a sentence when the man is not available to undergo imprisonment or punishment. That is not good logic. Your point today is

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that the process of law should not be hindered, that cases should be expedited and not allowed to

hang fire. Now, Sir, I have known cases where men have remained absconders for twelve years and more. During this whole course, the courts never proceeded to pass order of conviction against them. If an absconder

is not available to undergo imprisonment or undergo punishment, I ask in all sincerity, is a man lying on a death-bed, one who is not capable of remaining in court, is he in a fit state of health to go to jail and undergo imprisonment? I implore the Government to accede to this request, which is made by Honourable Members on this side of the House, to stay their hands and to allow us to give more consideration to this question. If you are not willing to grant this, I have already made it plain that it will be our duty to oppose it. There is one further reason, Sir, which I would like to add as to why we want this measure to be postponed at this stage. We all know that in these days, in another place, and in another country, the Assembly of the League of Nations is in session. Our delegates, the Honourable Sir Muhammad Habibullah and his coadjutors, are taking a keen and very interesting part in the deliberations of that Assembly.

**Honourable Members :** Whose delegates?

**Mr. Abdul Haye :** No matter whose delegates they are. If in this Session this measure is carried through, if this Bill is placed on the Statute-book as an Act, and the news is conveyed to the Assembly of the League of Nations over the cables, I am afraid, the Assembly of the League of Nations may ask Sir Muhammad Habibullah and other delegates of the Government of India to withdraw from the Assembly sittings. I want to save them this humiliation, and I hope the House will agree to this.

**Sir Darcy Lindsay (Bengal : European) :** I desire on behalf of the Group I represent to say that we support the amendment, moved by my Honourable friend Mr. Roy, to refer the Bill for the consideration of a Select Committee. I entirely agree with my Honourable friend Mr. Roy in what he said about the good work that can come out of a reference to Select Committee. I cannot see any particular point in delaying this measure at this stage, as is recommended by my Honourable friends Mr. Kelkar and Mr. Abdul Haye. It appears that a position has arisen which requires immediate attention. The interests of the country as a whole demand this measure, and it is on those considerations that we desire to support the Bill. In supporting the Bill, we take into consideration the point that the Honourable the Home Member put before the House as to the grave injustice done to the accused who may be proved innocent. These men are to be kept lingering in confinement so long as it suits a hunger striker to delay the trial. I also take into consideration the hardship to the witnesses in the trial. In this particular matter to which reference has been made, namely, the Lahore case, we are told that a very large number of witnesses are cited. I regard it as a hardship to those men to be kept in suspense as to when they will be called upon, week after week and possibly month after month. I go even further and plead for the hunger strikers themselves and all those who wish to resort to this measure to enforce certain views of their own. I understand from my Honourable friend Colonel Gidney that the measures that have to be taken against hunger strikers, that is forcible feeding, tend to the creation of great discomfort, almost amounting to torture. It is to save these men against this, Sir, that I think a measure of this nature is very necessary.

As regards the law, I am no lawyer, but I do think that I am blessed with a certain amount of common sense. It appears to me that, if there is a defect in the law, there is no reason why it should not be remedied. We have frequently before us amendments of the law, and I take it that this is an amendment of that nature. My Honourable friends Mr. Kelkar and

[Sir Darcy Lindsay.]

Mr. Abdul Haye in a sense gave their approval to the principles of the Bill.

**Mr. N. C. Kelkar :** No, no.

**Sir Darcy Lindsay :** They say there are quite good points in it, but they do not wish it to be brought forward at the present moment because it implied that it is connected with a case now pending. It was only yesterday, Sir, that my Honourable friend Mr. Jinnah gave great praise to the Honourable the Home Member for the reasonableness of his attitude in connection with the Child Marriage Bill.

**Mr. M. A. Jinnah :** Only with that particular measure. I do not withdraw what I said.

**Sir Darcy Lindsay :** He said that it was a national measure in the interests of India, and he hoped that the Honourable the Home Member would carry on with that good policy. Now, I ask my Honourable friend Mr. Jinnah if this is not a measure which carries forward that good policy.

**Mr. M. A. Jinnah :** I do not think my Honourable friend is quoting me correctly. I said this : if the Government will carry on that policy towards social reforms in this country, it will not only be welcome, but it will help India to go forward.

**Sir Darcy Lindsay :** I appeal to my Honourable friend Mr. Jinnah to look at it from the correct perspective and consider whether it is not advisable to give and take in these matters, and when the Honourable the Home Member comes forward with a perfectly reasonable proposal for the better Government of India, I ask my Honourable friend to give his support to it.

**Diwan Chaman Lall (West Punjab : Non-Muhammadan) :** Sir, I had no intention to inflict a speech on the House on this measure, but the utterance of Sir Darcy Lindsay compelled me to rise to my feet and to say what I have to say, not only of his speech but also of the measure which is before us. Sir Darcy Lindsay complained that he was possessed of common sense. (Laughter.) I have always considered that Sir Darcy Lindsay is possessed of very superior sense. But the only unfortunate part of it all is this, that in supporting lost causes, he misapplies that superior sense that he possesses, and this is one of the lost causes to which he has lent his support today. I say so for this reason. Sir Darcy Lindsay says that his common sense compels him to say that if there is a defect in the law, then we must remedy it. I want to ask Sir Darcy Lindsay, if there is a defect in the Government, what will he do ?

**An Honourable Member :** Remedy it.

**Diwan Chaman Lall :** There is obviously a defect in the Government. The Honourable the Home Member, in a speech in which he attempted to reason fairly well, suggested that there was a *lacuna* in the law. I suggest there is a *lacuna* in the Government, and my reason for suggesting that is a very simple one. Why are the Government in this very difficult position today, that they have to bring before this House a measure which is condemned by every decent lawyer in this country ? Why ? Simply because they have not come up to the expectations that the public entertain of them. It was a very simple matter. I hold in my hand a statement that

was made,—I understand it was never actually handed over to the Honourable the Home Member,—a statement made at the time when this hunger strike was resorted to by two of the leading members who are engaged in this strike, Mr. Bhagat Singh and Mr. Dutt. And what do they say? With your permission Sir, I intend to read that statement, and after having read it, I want to ask every Honourable Member present whether the majority of those demands, the totality of those demands, are such as could not be conceded by Government or by any civilised government. The letter is as follows :

“ Sir,

We, Bhagat Singh and B. K. Dutt were sentenced to life transportation in the Assembly bomb case, Delhi, on the 19th May, 1929. As long as we were under-trial prisoners in the Delhi Jail we were accorded very good treatment and were given very good diet; but since our transfer from that jail to Mianwali and Lahore Central Jails respectively we are being treated as ordinary criminals. On the very first day we wrote an application to the higher authorities asking for better diet and a few other facilities and refused to take jail diet. Our demands were as follows :

(1) We as political prisoners should be given better diet and the standard of our dietary should at least be the same as that of European prisoners.”

(Interruption by Colonel Gidney.)

If Colonel Gidney will only possess his soul in patience I will deal with him in a minute. (Laughter.)

“ It is not the sameness of diet that we demand but sameness in the standard of diet. (2) We shall not be forced to do any hard or undignified labour at all. (3) All books, other than those proscribed along with writing materials should be allowed to us without any restriction. (4) At least one standard daily paper should be supplied to every political prisoner. (5) Political prisoners should have a special ward of their own in every jail provided with all necessities as those of the Europeans, and all the political prisoners in one jail must be kept together in that ward. (6) Toilet necessities should be supplied to us, and (7) better clothing.

We have explained above the demands that we made. They are most reasonable demands. The jail authorities told us one day that the higher authorities would comply with our demands. Apart from that they handle us very roughly while feeding us artificially, and Bhagat Singh was lying quite senseless on the 10th June, 1929, for about 15 minutes after forcible feeding, which we request to be stopped without further delay.

In addition we may be permitted to refer to the recommendations of the United Provinces Jail Committee by Pandit Jagat Narain and Khan Bahadur Hafiz Hidayat Hussain. They have recommended the political prisoners to be treated as better class prisoners.”

Then they add a postscript which has been quoted by the Honourable the Home Member :

“ By ‘ political prisoners ’ we mean those people who are convicted of offences against the State : for instance, people who were convicted in the Lahore Conspiracy Case, 1915-17, the Kukori Conspiracy Case and the sedition cases in Bengal ”.

**Pandit Motilal Nehru** (Cities of the United Provinces : Non-Muhamadan Urban) : What is the date of that letter ?

**Diwan Chaman Lal** : It was published in the *Tribune* of the 14th July, 1929. Nearly two months have elapsed since this letter was published. Now, I want to ask the Honourable the Home Member, will he kindly tell me what exactly there is in this document to which any reasonable man can take any exception? Will he also further inform this House, whether, at the time when these demands were made, if the Government of India or the Government of Punjab had taken their courage in their hands and said that they would meet the situation by

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granting these legitimate and just demands, would the trouble have got to the stage that it has got to at the present moment ? As I said, it is not a defect in the law ; it is due to a defect in the system of Government under which we are living in the Punjab, that this situation has arisen. Far be it from me to say anything against the Punjab Government. Their souls are really past praying for, also their intelligence. If faced with a situation like this, they could turn round and say :

“ You complain about differential treatment being meted out to you and to Europeans, we will concede this point ; we will examine the broader issue later on, but as far as this particular issue is concerned we are quite prepared to concede the point that you are making and we will proceed with the case thereafter ”.

Can any Honourable Member on the Government Benches turn round and tell me that, if that had been done at that time, the trouble would not have been put an end to ? And let me be perfectly clear about the position. It was not the original demand of any of these prisoners, and it has not been at any time the demand of any of these prisoners, that they should resort to some sort of device in order to get out of this trial. Nobody has yet imputed that particular motive to any of these people. All that they are hunger-striking for at the present moment is this, that they want better treatment from Government ; they want to abolish this differential treatment that exists, treatment of one sort meted out to an Indian under-trial prisoner and treatment of another sort meted out to a European under-trial prisoner. Even if they are convicted prisoners it makes no difference. Would the system of Government have come to a stand-still if these seven demands that were made in this document had been conceded by the Punjab Government ? It is too late in the day to discuss the purely technical legal issue. The issue is one which is purely and entirely human. Why did not the Punjab Government and the Home Department of the Government of India look upon from that point of view at that period ?

I come now to the second point. What is the actual trouble at the present moment ? An allegation has been made that five members of the Jail Committee appointed by the Punjab Government went down to interview these hunger strikers, and an allegation has been made in the press that a definite undertaking was given to these hunger strikers that Jatin Das would be released.

**The Honourable Sir James Orerar :** That statement has been subsequently modified in the press.

**Diwan Chaman Lall :** What statement is the Honourable the Home Member referring to ?

**The Honourable Sir James Orerar :** It was said that an undertaking was given in regard to unconditional release. I am not aware as to what actually transpired, but I subsequently saw it stated in the press that no such suggestion was made by the Jail Inquiry Committee.

**Diwan Chaman Lall :** The Honourable Member did not hear what I said. In my statement I never mentioned the words “ unconditional release ”. I said that a statement appeared in the press that five members of this Committee went down to interview the hunger strikers and they gave them an undertaking that they would recommend the

immediate release of Jatin Das. I am sure the Honourable the Home Member, knowing the facts as he does, is not going to contradict me on this score ; it has not been contradicted so far and that statement remains. I have seen other statements too in which it has been stated that a promise was made of unconditional release, but I am not basing my case upon that. I am basing my case upon a statement which has not been contradicted so far in the press, either by Government or by any member of the Jail Committee.

**The Honourable Sir James Crerar :** Sir, may I remind the Honourable Member that the Punjab Government made it known that, if an application for bail in the case of this particular prisoner were made, they would not oppose it ?

**Diwan Chaman Lall :** Sir, the Honourable the Home Member is anticipating me ; I am coming to that. If that statement was made, what was the action taken ? What does the recommendation to Government of immediate release mean ? Does it mean release on bail ? It cannot obviously mean release on bail. If the Honourable Member postulates the independence of the judiciary, if he postulates that he has no right and that he cannot interfere with the judgment of the judiciary, then it cannot mean an undertaking to release the man on bail, because the release of a man on bail is a matter which is entirely within the competence of the trying magistrate. (Applause.) It is not within the competence of Government, and how then can they interpret the statement of the Jail Committee members about the immediate release of Jatin Das to mean that there should be a release on bail ? The immediate release of Jatin Das recommended by the Jail Committee can mean only one thing, and that is his unconditional release from jail and from the case in which he is an accused.

Now, Sir, I should like the Honourable the Home Member to direct his attention to this. He as well as Government can get out of this difficulty by conceding these legitimate demands. Personally I consider they are very legitimate and humane, these demands of the hunger strikers. But he has a greater duty to perform, a duty which, under different circumstances, was once performed a couple of years ago by one of his colleagues, Sir George Rainy, in which he thought that a promise had been given in a particular matter which involved the payment of something like Rs. 16 lakhs to strikers, and because he considered that a promise had been implied, he stuck to his promise and the payment was made. I say that this recommendation of the members of the Jail Committee should be considered to be an implied promise, a promise which the Government must implement if they want to do the honourable thing by the members of the Jail Committee as well as by the public. And I ask them to do the right thing in this matter and implement the promise implied. It is not for me to go into the technicalities of the law and to point out how this particular clause that is sought to be inserted in the Criminal Procedure Code—540B—should not be and is not worthy of being placed on the Statute-book. As my friend, Mr. Abdul Haque pointed out quite clearly, the law is there already ; you are empowered under 540A already. If you find that any particular under-trial prisoner is not capable of being placed before the court or brought to the bar, then you can try him separately. You have the right to do so ; and if you have the right, I ask, what do you mean by bringing in this legislation

[Diwan Chaman Lall.]

which goes against all the declared canons of jurisprudence ? For what is it that the Government ask us to do ? They ask us to provide this : that they themselves shall be the prosecutors ; that they themselves shall appoint the defence counsel and thereby be the defence themselves ; and that they shall take evidence against the accused in open court, but without giving the accused any right whatsoever (*An Honourable Member* : " Shame "). of testing the validity or the correctness or truth of the evidence that is produced against him. That is exactly the situation which would arise, and I ask the Honourable Member not to press this point. I ask Honourable Members to remember, that if Government do press this point, they realising that the situation is not the creation of Bhagat Singh and Dutt, or of the hunger strikers in Lahore, but is entirely the creation of the Government of the Punjab—I do not know how far the Government of India are responsible in regard to this matter—they should do the right thing and not be allowed to do the wrong thing by placing this particular section on the Statute-book. What does it mean ? If a man who voluntarily, by a voluntary act of his, or a course of conduct that he pursues, puts himself in this position, that he cannot be brought before the Court, then the Government can proceed to try him in spite of the fact that he is not present to defend himself. I want to ask the Honourable Member one question. Here we are dealing with a case in which the men refuse to take food. Suppose a man overeats himself by a voluntary course of conduct and thereby is unable to be present before the court, is this section going to apply to him ?

**The Honourable Sir James Orerar** : He could be represented by counsel.

**Diwan Chaman Lall** : Supposing one of the under-trial prisoners exposes himself, takes his shirt off and exposes himself to the bitter north wind that blows in the Punjab and sometimes at Lahore, and catches double pneumonia, is that a voluntary course of conduct ?

**The Honourable Sir James Orerar** : No.

**Diwan Chaman Lall** : The Honourable Member says " No ". Can he point out to me where the " no " would come in, if this section is passed by this House ? Where would it come in ? Is it or is it not a voluntary course of conduct ? I am merely pointing out one or two ridiculous aspects of this particular section.

I do appeal to the House, realising not only the technical importance of rejecting this measure, but realising the human aspect of the whole problem which has been so desperately, so foolishly, so absurdly and idiotically mismanaged by the Punjab Government—I ask every Member here, whose vote is not tied, to reject this particular provision that the Government of India is seeking to place upon the Statute-book.

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

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

**Mr. Anwar-ul-Azim** (Chittagong Division : Muhammadan Rural) : I am grateful to you, Sir, for giving me this opportunity to take part in

this debate. (*An Honourable Member* : "Louder please".) It may be in the minds of certain Honourable Members here that perhaps the back-benchers have not got any interest whatsoever in any measures, whether good, bad or indifferent. Perhaps there may be some truth in their contention, but nevertheless, I think it will be very necessary on our part to make our position clear,—the position of certain Members of the Central Muslim Party who practically on important occasions keep the balance of decision in this House. So, Sir, being actuated by that idea, I am on my feet.

I have listened with very great interest to what Mr. Kelkar in support of his motion had to say, and also to what Mr. Abdul Haye said with regard to the Bill itself. It appears to me that it would have been a very good idea if, after clauses 1 and 2 of the Bill, it was stated "Notwithstanding anything contained in section 540A of the existing Criminal Procedure Code" to clarify the ambiguity and a great many points which have been made by my friend Mr. Abdul Haye would have fallen flat and would have taken away much of the cogency with which he couched his remarks. Going a little further, I also think that sub-section (3) of section 540B of the present Bill seems to be redundant because there is also section 537 of the existing Criminal Procedure Code and I think the way it is worded is sufficient to meet the point raised by sub-section (3) of this Bill. I said to my Honourable friend Mr. Roy that when balanced minds meet together they will be able to bring out some improvement in the sections of this Bill. That is my submission so far as this Bill is concerned.

Another reason which actuates me to say a few words in this connection is this. Mr. Kelkar has pleaded that the example which these hunger strikers are setting up will help him to liberate the country or will make his country as free as Ireland. Personally, I do not think that that is the right course for any honourable and peaceful man to follow, because my creed, my religion, is peace and as such I do not think that I could support that part of Mr. Kelkar's contention. There is also another reason why I am willing to refer this Bill to a Select Committee. Here, in the very body of the Bill, under section 540B there is a clause which runs as follows :

".....in consequence of a single act or series of acts done or course of conduct pursued by him after his arrest, has voluntarily rendered himself incapable of remaining before the Court....."

This is a very ambiguous sort of clause and it requires explanation. The Select Committee will be able to make it more explicit and clear. There may be some force in the statements made by Diwan Chaman Lall with regard to the treatment accorded to people who happen to be in jail. But my experience is of course otherwise—I have been a visitor of a jail in my part of Bengal. If there is something wrong which requires remedy, it is the duty of the non-official visitors, who go over there from year to year on behalf of the public, to suggest the ways in which the thing complained of requires improvement. To make a certain action of a particular jail officer or officers in any particular place a grievance or for that matter a political weapon, it seems to me that we cannot be a party to that sort of agitation. I understand that both the Governments of the Punjab and the United Provinces have appointed, as the result of the agitation of our friends here and also in the press, two Committees to inquire into the grievances of the

[Mr. Anwar-ul-Azim.]

people who happen to be His Majesty's guests. But without being disrespectful to those people who call for status, those gentlemen who say that they are fighting for the freedom of their country, I should say this that they should have realised in their minds, before they brought themselves into the clutches of the law, what sort of treatment and comforts they would have while they happen to be inside the jail. If that is their own voluntary choice, I do not think that really honourable men, as they claim themselves to be, should make any grievance whatsoever of what is being done there. I have never heard that by hunger strikes any political concession has been gained by any body in any part of the world. People will surely misjudge them and will say that they are shirking their ordeal and making cowards of themselves. If any body says, "Release them unconditionally like Colins and others", they will be hampering the ordered progress of this country towards responsible self-government, which we all covet. With these few words I support the amendment of Mr. K. C. Roy.

**Mr. R. S. Sarma** (Bengal : Nominated Non-Official) : Mr. President, it is a very difficult effort for a new Member to make his first speech in this Honourable House and the climax of that discomfiture is reached when one has to address this House on such a contentious measure, a House which is perhaps still under the spell of the impassioned eloquence of my Honourable friends Diwan Chaman Lall and Mr. Abdul Haye. I hope that this House will give me some indulgence to place before them my view with regard to this Bill. I desire to support the amendment of my Honourable friend Mr. K. C. Roy for referring this Bill to a Select Committee and to oppose strongly the amendment of Mr. Kelkar. My support of this amendment for referring this Bill to a Select Committee implies my unequivocal support to the principle underlying this Bill. In lending my support to this Bill, I do not pretend to speak as a person that can claim either to be a lawyer or a jurist or a great leader or as my friend Mr. Chaman Lall is, a leader, a politician and a lawyer rolled into one. But as long as law is not divorced from common sense, I venture to submit to this House that no reasonable man can have any doubt as to the necessity of the proposed enactment. Diwan Chaman Lall, in his impassioned speech, diverted our attention from the real issue before this House, and side-tracked us by irrelevant considerations. He imported a lot of emotion into his speech on this Bill, which is a very very dry one indeed.

In spite of the legal technicalities that the Honourable Mr. Abdul Haye introduced in his speech, to me a layman, the thing appears to be very simple and it is this. So long as the Government has not abdicated or otherwise been replaced, by means and methods either violent or non-violent, it must carry on the administration of justice. Nobody can doubt that any Government would be failing in its elementary duty and in its fundamental obligations to society, if it allowed the machinery of the administration of law to break down or to be paralysed and wrecked by the very simple device of an accused in a case choosing to render it impossible for law to function. I shall illustrate my point. If a gang of about 20 criminals conspire, and commit dacoity and are arrested, all that they have got to do to evade trial is for every one of the gang to try in turn to have a hand in the game of postponing the trial by making himself unfit to appear in a court of law and the Court will be compelled to abandon the trial unless the robbers condescend to desist from obstructing the course of

justice and are pleased to decide that they have no objection to be tried by a court of law.

It is the easiest of all performances in the world to cloud the issue by referring to platitudes, such as liberty of the subject, or the fundamental right of every accused to be present at the trial. If Honourable Members who indulge in such platitudes are the unfortunate victims of a heinous crime, and the perpetrators of that crime are arrested, and these people take it into their heads to have recourse to these devices, and by a pre-concerted plan render the administration of justice impossible by making themselves unfit to attend the trial, then I think Mr. Chaman Lal and others who are of his way of thinking will have a better appreciation of the other side of the picture.

There is another point which the Honourable the Home Member made with regard to this Bill, namely, the question of delay. We in Bengal, who have had experience of political trials, know what inordinate delays in trials mean. Everybody knows that these inordinate delays are subversive of fair trial. So long as the accused go on practising the congenial game of absenting themselves, what happens to the witnesses? The longer the delay, the greater the opportunities to seduce witnesses, the larger the scope for intimidation. There is also the danger of the failure of justice, by witnesses finding it impossible to be able to give a long and connected narrative of events, in view of the lapse of time.

With regard to this Bill, I cannot understand what objection any reasonable man can have. How can it be said that the position of the accused is rendered in any way difficult by the provisions of the Bill? The accused is allowed a full opportunity to attend, and if he does not choose to avail himself of his opportunity by his own voluntary Act, I do not think, Sir, that anybody can have the face to say that the provisions of the Bill will operate harshly upon the accused. Mr. K. C. Roy pointed out this morning that these devices such as hunger strikes are getting more and more popular, and everybody knows that the success achieved by these Indian MacSwineys will tend to increase their number. A new situation has really arisen, and this new device has got to be met. If a gang of accused claim the power to paralyse the administration of law by their own voluntary acts, I think every law-abiding citizen has the right to expect this Government to introduce legislation to fight this new menace.

The Honourable the Leader of the Opposition, in the course of his eloquent address in winding up the debate on the Sarda Bill yesterday, made these striking observations. I am quoting him from memory. He said that "The eyes of the whole world are upon this House, that the House is on its trial and to the extent they helped in the passing of that legislation, to that extent they would rise in the estimation of the peoples of this world." Those words are still ringing in our ears and they are true today as they were yesterday, as true of the present Bill as they were of the Sarda Bill. No legislature, with a reputation for sane and sober statesmanship and alive to its responsibilities for the administration of law and order, can throw out a measure so simple, yet so necessary.

In conclusion I want to refer to one point to which Mr. Chaman Lal made reference in the course of his speech. He said that no decent man, who is not tied to the Official Benches, will fail to go to the same lobby as Mr. Kelkar. This canard about non-official nominated Members

[Mr. R. S. Sarma.]

being tied to the Official Benches is absolute rubbish. I may point out to Mr. Chaman Lall that the non-official nominated Members are unfettered, and that they vote according to the best of their judgment, and if he says that we are tied to the Official Benches, let me remind him that our ties are like silken threads compared to the chain of triple steel in which the unruly Swarajist followers are held by their party leader.

**Mr. Jehangir K. Munshi** (Burma : Non-European) : Sir, all great men have hobbies ; and my Honourable friend Sir James Crerar being a great man has his own hobbies. His principal hobby at the moment seems to be to appear before this House as the central figure in a series of legislative stunts of a sensational and unconstitutional nature. (Laughter.) During the last twelve months Sir James Crerar has, on several occasions, stood up before this House with a solemn face and has urged on this House the grave and emergent necessity for enacting the Public Safety Bill. Only the other day my Honourable friend the Home Member had to admit that the Public Safety Bill has been a dead letter. Now, Sir, I ask the Government of India if they have enhanced their reputation for political or administrative sanity by insisting on placing on the Statute-book the Public Safety Bill by means of an Ordinance in the teeth of public opposition, and then being forced to admit that this odious legislation has been proved to be unnecessary ? (Applause from the Non-Official Benches.)

Sir, every human being is liable to err ; even the august personages who constitute the Government of India are liable to err, although they may not be prepared to admit it. We thought, however, Sir, that the Government of India would benefit from past experience and that they would seriously consider every aspect of the case before they came again before this House with legislation of a similar nature ; but in that we have been disappointed.

Sir, once again the Government of India approach this House with a Bill unparalleled in the history of Criminal Jurisprudence. I assert, and I think my Honourable friend the Law Member will admit, that it is the basic principle of the Criminal Jurisprudence of every civilized country that no accused can be tried and convicted *ex parte* in his absence unless he is represented by his counsel. The only argument which I have been able to discover from the brief and unconvincing Statement of Objects and Reasons is that unless this Bill is placed on the Statute-book, there will be delay and defeat of justice in a number of cases. My Honourable friend, Mr. Abdul Haye, has read out to the House section 540A of the Criminal Procedure Code. That section, Sir, makes ample provision for the trial of several co-accused when one or more of them are incapacitated from attending court whether by their own voluntary acts or by any other circumstance. Now what is the necessity of trying to draw this fine distinction between incapacity to attend court brought about by an accused person's own voluntary acts and incapacity brought about by circumstances beyond his control ? The fact remains that the Criminal Procedure Code makes ample provision for a trial under these circumstances. Sir, I am not convinced that the Government of India themselves believe in the necessity of the measure they have brought before the House on the grounds which they have advanced.

Now, Sir, having arrived at that premises, I must prove the matter further, and in doing so I am forced to the irresistible conclusion that the

main object which has actuated the Government of India in bringing this Bill before the House is not because they are afraid of the delay or defect of justice, but because they are seriously alarmed at the consequences, the far-reaching consequences to the country of these hunger strikes. ("Hear, hear", from the Non-official Benches.)

Sir, the Government of India are fully alive to the fact that it is not every hunger-strike which can appeal to the country; in order that a hunger-strike may appeal to the country, certain factors must be complied with. The man must have a good cause and he must believe in his cause, the man must have a brave and self-sacrificing spirit, and the man must feel that he has public opinion behind him in the fight he is putting up. Now, Sir, the real fear of the Government of India is that if hunger-strikes are resorted to in these series of political prosecutions, they are calculated to stimulate public opinion, to focus public opinion on the grievances of India, to arouse every section of the people of India to a fuller and more vivid realisation of the humiliating and degraded condition in which Indians are living at the present moment. (Applause.)

Sir, turning now to my Honourable friend Mr. Sarma, I congratulate him on two things: his maiden speech and his extremely well-fed appearance. (Laughter.)

**Sir Denys Bray** : Order, order.

**Mr. Jehangir K. Munshi** : Sir, my Honourable friend Mr. Sarma has tried to argue that if ordinary criminals resort to hunger strikes, the administration of justice will be brought to a standstill. I wonder, Sir, if my friend Mr. Sarma has ever observed a fast for 48 hours?

**Mr. R. S. Sarma** : I have often done that.

**Mr. Jehangir K. Munshi** : Well, then, appearances are deceptive. (Laughter.) Now, the whole point which Mr. Sarma has tried to make out is that hunger-strikes will be frequently resorted to by ordinary criminals. But I repeat, Sir, that no man will resort to hunger strike unless he has a good cause and believes in his cause, unless he has a noble spirit, and unless he feels that he has got public opinion and sentiment behind him in the cause that he is fighting for. (Hear, hear.) There is absolutely no analogy between the case of the ordinary criminal and these brave, unfortunate men who starve themselves to death for a good cause and who commend public support and sympathy. Sir, I do not think the Government of India would for one moment adopt the novel and puerile arguments advanced by Mr. Sarma. The Government of India have made it clear that the object of this Bill is to deal with the situation created by the hunger strikers in the Lahore alleged conspiracy case, who have got the country behind them in the fight which they are putting up against the treatment meted out to them in jail based on the utterly indefensible principle of racial discrimination. (Applause.)

**Mr. Jamnadas M. Mehta** : Sir, I rise to oppose the motion for consideration made by the Honourable the Home Member, and also the amendment for a Select Committee moved by my Honourable friend, Mr. K. C. Roy; and I do so not only on behalf of myself but on behalf of the whole of the Congress Party which is determined to oppose this Bill, lock, stock and barrel. I am equally opposed on principle to the circulation of this Bill, because I do not think it needs any circulation at all. It is, on the face of it, so outrageous a measure that no section of the public could possibly be in its favour, and therefore any circulation of the Bill would

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be a mere waste of time. But if there are people in this House and outside who have any doubt on the matter, then we are willing that the amendment for circulation is passed. But, Sir, the Congress Benches are definitely convinced that public opinion is bound to resist this attempt at the curtailment of the elementary rights of the accused in a criminal case. Sir, I congratulate the Government on the latest recruit they have got in the person of Mr. Sarma. (Hear, hear.) I congratulate Mr. Sarma also on his maiden speech and on his eloquence, which I think however might well have been used in a better cause than supporting a Government dead to all sense of human feeling. Sir, my friend Mr. K. C.

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Roy, in moving for a Select Committee, said that Government were compelled to resort to this measure, and that circumstances were unparalleled and there was no other way but to have a legislation of this kind. Mr. Abdul Haye and other friends have conclusively established that, if Government really wanted to proceed with the trial, then there is abundant provision in the Criminal Procedure Code as it stands today and that there is nothing to prevent them from going on with the trial against those accused persons who are still capable of being brought before the Court. But it appears that the Government are not satisfied with that; they want to proceed with this trial against all the accused at one and the same time. And it is for this purpose that they are prepared to trample under foot the rights of the accused in criminal cases. My Honourable friend Mr. K. C. Roy said that this is an unparalleled case. I submit, Sir, that it is both unparalleled and unparalleled. If my friend has not forgotten the suffragettes' agitation in England only 20 years ago, he will find that the suffragettes were being arrested and sent to jail where they went on hunger-strike. Dozens of suffragettes were on hunger-strike in England about 20 years ago, not once or twice but several times, and the judiciary never for a moment suggested that because these women were on hunger strike.....

**The Honourable Sir James Orerar :** They were on hunger-strike after conviction.

**Mr. Jamnadas M. Mehta :** Not always; however I am coming to cases of hunger strike before conviction. The judiciary never for once suggested that special measures should be taken for the purpose of preventing this hunger strike. And, whenever a suffragette was on hunger strike, she was released, but if necessary after she got better, she was again arrested. The Honourable the Home Member thinks that there is no parallel of hunger strike before conviction. I will make him a present of the celebrated Saccho-Vanzetti case in America which lasted for seven years. In India the hunger strikes are not yet three months old. In the celebrated Saccho-Vanzetti case the Government of America and the judiciary combined to send two innocent workers to the electric chair and murdered them. Saccho and Vanzetti both went on hunger strike, not only after conviction but during the retrial motion and not for a day or two but for 33 days. I will ask the Honourable the Home Member to refer to a book called "Boston" written by Upton Sinclair and, although it is supposed to be a novel, there is no doubt, as anybody who reads the book will find, that so far as references to Saccho and Vanzetti are concerned, everything stated in the book has actually happened, and whatever is written in "Boston" about Saccho and Vanzetti personally is correct. On page 489, under Chapter "Laws delays" it is stated that Saccho rebelled in the jail. Because he did not,

get the kind of work which suited his dignity, as he thought it, Saccho declared what he called a "hungry-strike". Being an Italian, he did not know the English term. He said: "I am on hungry-strike". And for 33 days he did not touch food. What happened then? There was no corresponding the Honourable Sir James Crerar to bring a legislative measure to see that because the accused was hunger-striking, his presence must be dispensed with, and the Court should proceed with the inquiry or the trial in his absence. Although there was a Judge, who was, according to this book, hard-hearted, and trampled under-foot all the traditions of a judicial office, when Saccho hunger-struck for 33 days, the Sheriff, in charge of the jail, refused under the circumstances to take the responsibility of bringing Saccho from the jail to the court. They did not pass any measure, which at once released the Executive from the obligation to present the evidence against the accused in his presence and to give him the fullest right of cross-examination. There were more occasions than one of hunger-strike on the part of these two prisoners. Yet never have we heard that there was any demand in America, that the presence of these people should be dispensed with and that the trial should proceed in their absence; does the Honourable Member and those who support this Bill realise that the possibilities are, if you proceed with a trial against an accused in his absence, that it may result, indeed, it is almost always bound to result in a conviction, in the absence of anybody to contradict the evidence and to cross-examine the prosecution witnesses? As the opposite side evidence is given on each, and there is nothing to contradict it, the court will be ordinarily bound to accept it. There is no lawyer to defend the accused and there is no evidence that can be produced. In such conditions the only inevitable conclusion of the trial would be the conviction of the accused, and if that conviction is for murder or for State offences, the chances are that one or more persons would be deprived of their lives, and yet it would be done under the forms of judicial procedure and in the name of justice. Is the House prepared to countenance this? Government are here to demand a power which may lead to the conviction and the judicial murder of human beings who have had no occasion to stand their trial. Why does Government want such a power? Cannot Government go on with the trial against those who are not hunger-striking? Has not Government already realised that these hunger-striking are standing out for a principle? They have made their terms already clear. They want that they should be given decent treatment befitting civilised people while they are under trial.

**The Honourable Sir James Crerar:** That is not the whole demand.

**Mr. Jamnadas M. Mehta:** That is the main demand, and they protest against the discriminations that are made in the treatment of the European under-arrests and Indian under-arrests. I remember having read the Bombay Jail Code and the several cases which happened in 1921. I have also read of horrors of the Vizapur jail and the discrimination that was made between the Indian prisoners and the European prisoners. It will be remembered that European prisoners were given chairs, tables, tea, milk, towel and soap and many other articles of a like nature at public expense. One would have thought that these were not convicts, prisoners or criminals, but State guests having a rest-cure in a sanatorium. Now, what is the demand that the Indian hunger-striking are making? They say: "Give us reasonable and civilised terms while we are under trial and make no discrimination". If the Europeans can be given a certain

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standard of life irrespective of whether they have used violence or not, irrespective of whether they are criminals or not, I cannot understand why the same treatment could not be given to the Indians under trial. Why should they be compelled to go on hunger-strike to the extent of 40, 50, 60, 70 and even 80 days, in a matter where no question of principle is involved? Here are cases of hunger-strike unparalleled in the history of the world. Even the hunger-strike of Mr. MacSwiney lasted only for 63 days; but these young men are dying for a cause, and for a principle and it is to our infinite shame that we find our own countrymen sitting behind the Government Benches and asking for a reference of this Bill to the Select Committee, talking through their hats and comparing these young men with brigands and robbers. What is it that these young boys demand? Why, Sir, this Bill could be rolled up in a minute and the hunger-strike would be over in another minute if the Government would simply accede to the reasonable requests which they want as civilised human beings. In the last Session, Bhagat Singh and Dutt were in the House at Delhi. After the last Session they were convicted in the famous Assembly bomb case. The House has already passed a Resolution condemning their violent action. But it should not be forgotten, that, even though they were guilty of criminal offence, for which the House rightly condemned them, even though nobody who has any regard for the non-co-operation movement of Mahatma Gandhi will ever stand up for violence, the entire responsibility for whatever happens in this country, whether violent or non-violent, rests and must rest on those Benches opposite and on them alone. What does this Bill amount to? Under the forms of law, Government want the power to take human lives. That is nothing more and nothing less than the object of the Bill. Bhagat Singh may be a criminal; Dutt may not be a criminal. We do not know whether the rest of the hunger-strikers are criminals or not; but these young men will ever remain enshrined in the memory of this country after every one in this House is wiped out owing to the splendid self-sacrifice that they are offering today on a matter of principle. There is nothing more that a man can give for any cause. They are giving away the most precious possession of man, namely, their lives. They are surrendering their lives at the altar of what they consider to be their duty. If Government were wise in their time, if Government will only understand the springs of human action in the right spirit, they would immediately grant the demand of the hunger-strikers. There is nothing unreasonable, nothing wrong in their demand. It is only obstinacy, cussedness and the prestige of this Government which prevent them from acceding to the reasonable demands of these persons and ending this most unfortunate controversy. I agree with Mr. Sarma in saying that the whole world is looking at us, the whole world is watching whether the Indians are a nation of cowards and sycophants or whether, even in their present degraded condition, they have the courage to say, "No" when occasion demands. I hope the House will prove by its vote that, degraded as we are, we cannot stand the outrage that is being contemplated against these heroic young men, and I hope the House will stand united and will say, "No", in no uncertain terms to the motion of the Government. Sir, I oppose.

**Mr. H. W. Emerson** (Home Secretary): Sir, several Honourable Members, during the course of the debate, have referred to the fact that this Bill is unnecessary because the existing law provides the machi-

nery by which these accused can be brought to trial. I am not concerned with the legal aspects of the case, nor am I competent to discuss them. But there are certain facts concerned with that statement that it is necessary to explain to the House. Section 540 A (2) of the Code of Criminal Procedure provides that, when one of the accused is not present himself and is not represented by counsel, the Court may split the trial up and proceed against those accused who are present, or may adjourn the case. Honourable Members have asked me why is this course not pursued in the present case. Now, at one time or another, fifteen of the sixteen accused produced before the Court have been on hunger strike. The largest number that has been on hunger strike at one time is 13. At the various hearings of the case, sometimes six have been absent, sometimes five, sometimes four and so on. But those accused who have been absent on various days have varied from hearing to hearing and it has never been possible to predict that on a certain date those accused would be present who were present on the previous hearing. Moreover, a hunger strike involves artificial feeding, and the hunger strikers have it in their power by resistance to that artificial feeding to make themselves incapable of attending a hearing. Thus, where you have a large number of accused, it is possible for them so to ring the changes as to make it impracticable to proceed against any of them. The difficulties in the present case are particularly great because of the large number of accused and because of the large number of witnesses. The prosecution has already filed a list of 450 witnesses, whom they intend to call, and I understand that it is probable that 200 more will be added to that number. Now it is true that, under the existing law, we can go on and have ten separate trials or even sixteen separate trials, but from the practical point of view, it is not possible to produce 650 witnesses in sixteen different trials.

**Pandit Madan Mohan Malaviya** (Allahabad and Jhansi Divisions : Non-Muhammadan Rural) : Are all the witnesses to be produced in each case ?

**Mr. H. W. Emerson** : I believe the case against all the accused is practically the same. It may be said that this was the state of affairs before the suspension of the hunger-strike ; but that now, there are only eight on hunger-strike and eight are taking food. My Honourable friend Mr. Abdul Haye suggested that the case should proceed against the latter block of accused. The answer again is that there is no guarantee whatsoever that today or tomorrow or the next day one or more of those eight will not join the hunger-strikers. In fact, they have given a statement to the Punjab Government that, in certain circumstances, such a course would be pursued. I hope, therefore, that Honourable Members will be satisfied that, from a practical point of view, the remedy provided by section 540 of the Criminal Procedure Code is in fact no remedy at all.

Several Honourable Members on the other side of the House have put forward the argument that this Bill is unnecessary, because a remedy is to be found in another direction. My Honourable friend Mr. Chaman Lall read out the petition of Bhagat Singh and Dutt, published in the *Tribune* of July 14 ; he and other speakers maintained that there was nothing unreasonable in their demands ; the Punjab Government by a stroke of the pen could have accepted them, and in refusing to make that

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stroke they are guilty of the situation that now exists and are responsible for any consequences that may result.

The Honourable Mr. Jamnadas Mehta said the same thing, only I think, in his case, he attributed the present situation to the cursedness of the Government of India. (*A Voice* : "Is there any doubt ?")

However, Sir, I wish to satisfy this House that these demands, simple though they may appear, involve vital principles. There are three issues raised. First of all there is the question as to whether the demands of Bhagat Singh and Dutt are reasonable as applied to themselves ; secondly, there is the general treatment of political prisoners ; and thirdly, there is the racial question of the differentiation between European and Indian prisoners.

The issues raised cover a wide field, but it is only fair to Government that the case should be fully put, and if I have to deal in some detail with these matters, I am sure the House will have forbearance with me, having regard to the deep interest in these questions which they have evinced. If we take the demands of Bhagat Singh and Dutt, we can I think separate them according to their character and according to the persons to whom they are to apply. In regard to their character, the claims are briefly, that they should receive the same treatment as European prisoners. They should be allowed newspapers, furniture, books and so on. If these demands were claimed for special class prisoners I myself would be inclined to say that they are perhaps a little extravagant in some directions, and that they require some modification ; but I would not say that they were totally unreasonable. It is when we come to the second aspect, namely, the class of prisoners to whom those privileges are to be applied, that Government must definitely join issue with those who argue that their acceptance would be only a reasonable gesture.

Mr. Chaman Lall this morning read out the petition of these prisoners and it is only necessary for me to repeat the footnote for the benefit of the Honourable Members of this House :

"By 'political prisoners' we mean all those people who are convicted for offences against the State ; for instance, the people who were convicted in the Lahore Conspiracy cases, 1915—17, the Kakori Conspiracy case and sedition cases in general."

**Diwan Chaman Lall** : Does the Honourable Member deny that they are political prisoners ?

**Mr. H. W. Emerson** : I will deal with you faithfully later.

The Honourable the Home Member gave a brief description of the Ghadr Conspiracy Case of 1915—17 and the Kakori Conspiracy Case of 1925. It was a feature of those cases that the victims were usually peaceful, harmless villagers. Whatever may have been the sins of omission and commission on the part of Government, those villagers had no concern with them. Another feature of the cases was the brutality of the offences committed, and in this connection I will read a very short extract from the appellate judgment in the Kakori Case of the Chief Court of Oudh :

"On the 9th March, 1925, a similar armed dacoity was committed in Bichpuri. The victims on this occasion were Toti, a well-to-do cultivator with a holding of some 36 acres, his brother Bihari and their wives and children. A gang of over 15 men raided their house between 9 and 10 P.M. Some of the members of the gang were in

possession of fire-arms. The dacoits used considerable violence on the inmates and employed torture. One of them seized Toti's young son, placed the edge of a knife at his throat and threatened to cut his throat if Toti did not disclose where his money and valuables were concealed. The boy was not, however, seriously injured. Toti was nearly throttled, the point of a knife was placed against each of his eyes and he was threatened with blindness if he did not give up his property. He was not blinded, but he received a cut under one eye. Finally a cloth soaked in oil was inserted between his eyes. The cloth was then set alight."

These, Sir, are some of the offences committed by these persons for whom it is claimed that special privileges should be granted. In this very case a reduction of sentence was pleaded before the Chief Court of Oudh on the ground that these robberies were committed, not for the personal gain of the robbers, but solely in order to obtain funds for the furtherance of a cause which they had at heart. This is what the learned Judges said :

"It appears to us that the distinction in gravity between the act of a man who shoots because he desires to kill another and a man who shoots to kill because he desires that another man should not interfere with his committing a robbery, is too fine to form the basis for a difference in sentence ; and we can find nothing to make the robbery of inoffensive people, such robbery being accompanied by murder, appreciably excused by the fact that the perpetrators desired funds for the purpose of conducting revolutionary propaganda."

This House looks with suspicion at the Executive ; but we have here the opinion of the highest judicial tribunal to which the accused could appeal.

The demands of Messrs. Bhagat Singh and Dutt, including as they do a reference to the Kakori and Ghadr conspiracy cases, leave no manner of doubt as to what they involve. But briefly, they amount to this : that no matter how lowly may be the origin of a political prisoner, no matter how humble may be his social status, no matter what atrocities he may commit or what loss of life and property he may inflict on innocent persons, nonetheless, if he is able to prove that his motive was political, he is to be given privileges denied to the ordinary criminal whose crimes are not sanctified with the halo of political motive....

**An Honourable Member :** What happens to Europeans ?

**Mr. H. W. Emerson :** I intend to deal later with Europeans. I will first of all deal with political prisoners. Now, Sir, do my Honourable friends suggest that the Punjab Government were to come to a decision of the kind stated above, and without a moment's hesitation, and merely to get themselves out of a temporary difficulty, they were to surrender vital principles ? It is the duty of Government to examine and redress grievances where those grievances are reasonable, but it is equally their duty to refuse to surrender vital principles.....

**Mr. Gaya Prasad Singh** (Muzaffarpur *cum* Champaran : Non-Muhammadian) : Of racial discrimination for under-trial prisoners.

**Mr. H. W. Emerson :** ...when they are extorted by the methods of blackmail. I have said that it is the duty of Government to examine grievances where they are reasonable ; and in this connection I should like to say a few words about the general question of political prisoners. Government are conscious of the fact that this matter is a subject of deep and genuine concern to Members of this House, and to a large section of the public. They know that there is a belief abroad that the Government of India and Local Governments treat their political prisoners in a manner which is much less liberal than similar prisoners are

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treated in other countries. I would like to remove the misconception that exists in this matter, and at the same time to attempt to explain the policy of Government. We do not recognise in our jail rules the class of political prisoners; we recognise the class of special class prisoners, which is wider than that of political. We say that, provided a man has not committed certain offences, which, for the sake of brevity, I will call excluded offences, and provided that his status, education and manner of living are such as to justify certain privileges, then we do not care whether he has committed that offence with a political motive or a religious motive or a personal motive; we give him those privileges.

**An Honourable Member :** A wrong statement.

**Mr. H. W. Emerson :** There are two criteria : firstly, the nature of the offence, and secondly the character, status, and education of the prisoner. The excluded offences are, broadly speaking, those which involve violence or abetment of violence or which involve offences against property, or seducing of soldiers or police from their allegiance, and offences committed on hire in pursuit of political causes, that is to say, a political offender who is paid to commit an offence. That is broadly speaking....

**Diwan Chaman Lall :** Do you know of any cases like that ? May I ask the Honourable Member if he is prepared to substantiate that statement that there are politicians who are paid to commit crimes ?

**Mr. H. W. Emerson :** The statement I made was that such offences were included in these offences that are excluded from special consideration. I made no statement that such offences were committed.

**Diwan Chaman Lall :** Is the Honourable Member prepared to withdraw that statement ?

**Mr. H. W. Emerson :** Those, Sir, are the excluded offences. A prisoner who is classed as a special class prisoner enjoys certain concessions denied to the ordinary prisoner. He is allowed to wear his own clothing : he has accommodation separate from other prisoners : he is allowed to supplement his diet by purchase from outside : he is given no labour unsuited to his previous position in life, and he is allowed to associate with persons of his own class. Now, the common statement made is that those privileges which we give are first of all illiberal in their character, and secondly, that they are applied only to a small section of the class of prisoners who get similar benefits in other countries. We have been at pains to ascertain what is the practice in other countries ; and we chose England, France and America as being the countries in which political prisoners were likely to be treated more liberally than anywhere else. In England a Bill was moved in 1908 and again in 1912 to provide facilities for political prisoners. The Bill made no progress, and the attempt has not been renewed since 1912. Neither the law in England nor the rules of jail administration take any account of political motive.

The Prison Act of 1898 provides that prisoners shall be divided into three classes. In the first division are included persons whose character, antecedents and the nature of their offences warrant such inclusion. But

it is very rarely that prisoners are included in that division, and many of those who are included are persons who have not sent their sons or daughters to school as the Compulsory Education Act requires. About 1912 these statutory rules were liberalised by a measure, which is often referred to in the Indian Press as the Churchill Rule. It was introduced by Mr. Winston Churchill when he was Home Secretary, and the occasion on which he introduced it was the situation created by the activities of the suffragettes. The suffragettes were occasionally guilty of technical felony; they sometimes broke a window; occasionally caused a fire, and so on; and in order to mitigate the rigours of imprisonment of persons of that class, Mr. Churchill introduced the rule. It laid down that the privileges should not be given in any case which involved dishonesty, cruelty, indecency, or serious violence, and they should be given only to persons of good character. Here, again, a certain number of suffragettes benefited, but there was, and still is, a great prejudice against allowing to prisoners the benefits of the rule. Where privileges are given, as for instance, to first class misdemeanants, they are on the lines of those given in India. In one or two respects they are more liberal, for instance, an interview is allowed once a fortnight instead of once a month, a letter is allowed to be written once a fortnight instead of once a month. In other ways, they are less liberal. For instance, the English first class prisoner has to pay for any menial services rendered to him by another prisoner; under our rules those services are free. In one very important respect our rules are far more humane than those of England. In England a first class misdemeanant is confined in practically solitary confinement. He is allowed to associate with persons of the same class for one hour a day, but it is rare that there are any persons of his class in the same prison. It practically amounts to this, that he is confined in solitary confinement. Our rules definitely give the right of association not for an hour a day, but continuous association with other first class prisoners. I think, therefore, that Government can justly claim that our rules, as they stand at present, are more liberal than the English rules.

Now, with regard to France, there are no statutory rules and the practice varies in accordance with the Government in power. But no prisoner convicted of any crime involving violence is eligible for any of the privileges, and the privileges are confined to what would be called in India political prisoners guilty of the less serious offences. Again, the privileges are very similar to those granted in India; they are certainly not more generous. In America....

**Mr. President :** Is the Honourable Member going to deal with every country ?

**Mr. H. W. Emerson :** Only America, Sir. In America there are no rules at all; they do not recognise political motive.

On behalf, therefore, of our existing rules, I put forward three claims. Intolerant as they are stated to be, firstly, their liberality has no parallel in the previous history of this country, whether under Hindu, Muhammadan or Sikh rule; secondly, they have no parallel in the present history of neighbouring countries; and thirdly, we have been unable to ascertain any Western country in which the rules are more generous than here. But that is not all. Government recognise that there is uneasiness about these rules; and they do not claim that they are perfect. If

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there are any defects in them, we desire that those defects should be put right, and with that end in view we have addressed Local Governments and have asked them to re-examine the rules relating not only to special class prisoners but also to under-trial prisoners. Our letter dated the 17th August is not confidential, and I should be glad to give a copy to any Member who so desires. I think that any Member who reads the terms of that letter will admit that it is framed on as generous lines as it is possible to frame it, with the vital reservation that we do not accept the claim that a man should be given these privileges, whatever his offence may be, merely because he had a political, religious or other motive.

Now, there are many points raised in that letter, and I am not going to weary the House by explaining them, but I will just take one or two of the more important points in which I believe that Honourable Members are specially interested. First of all, there is the question which is agitating the minds of a large number of people, that there is a big difference between the scale laid down for the ordinary prisoner, the ordinary cultivator or labourer, and that fixed for the European. Now, so far as under-trial and special class prisoners are concerned, we have suggested to Local Governments that it is a point for consideration whether one or more scales ought not to be introduced at Government's expense, varying according to the mode of life of the prisoner concerned. Then, another important point in which Members I think are interested is the question as to whether our excluded offences are not too wide in scope. We have invited Local Governments to examine that question and to see for instance, whether it is necessary to include all offences against property. I have no doubt they will also consider whether it is necessary to include those offences committed by hired persons in pursuance of a political movement—offences which several Honourable Members say do not exist and never have existed. We have asked Local Governments to pay particular regard to public opinion, and in our communiqué, dated the 10th August we invited leaders of public opinion to assist Local Governments with their advice. I have no doubt that as a result of the re-examination of the rules, our final rules will be far more liberal than any that are to be found in any other country in the world.

Now, Sir, I come to the most difficult and unpleasant part of my subject—the question of the differentiation between Europeans and Indians. For some reasons I regret that this matter has been introduced into this debate, because racial prejudices are apt to warp the judgment and to cloud the issues. For other reasons I am glad that the opportunity has been given of trying to examine the essentials of the problem. We have, I think, to maintain a proper sense of proportion in this matter. We have to realise what the dimensions of the problem are. Yesterday I ascertained from the Punjab Government what was the proportion of European prisoners to the total number of prisoners confined in the jails of the province. I was told that there were 13 European prisoners out of a total of 21,000. As one Honourable Member has said, the question of number does not affect the principle. That is quite true, but as practical and reasonable men (and we are all practical and reasonable men), when we come to search for a solution, we have to pay some regard to the number. My next point is that I would like to endorse some of the observations of Sir Louis Stuart in the Report of the Jail Inquiry Committee. Sir Louis

Stuart is the Chief Judge of the Chief Court of Oudh and he was the Chairman of the Committee. I feel certain that every European in the House will wholeheartedly endorse what Sir Louis Stuart said. This is what he stated :

" I have always held the view that an offence committed by a European is in no way palliated by the fact that he is a European. I consider that the offence is aggravated by that fact."

And then he went on to say that the differentiation in treatment was purely on questions of health. He takes the reasonable line that an important principle of jail administration should be to give to every person, to whatever race he may belong, facilities sufficient to keep him in a reasonable standard of health ; but that, in the interests of the taxpayer, no further facilities should be given. Now, what is this differentiation between the European and Indian prisoner ?

I think it will assist the House to grasp what is rather a confusing subject, if I make it clear that the differentiation occurs in the basic jail rules ; that is to say, there are different basic scales of diet laid down for the ordinary prisoner and for the European prisoner. When we come to the additional privileges granted to under-trial prisoners, to the additional privileges granted to special class prisoners, there is no distinction whatsoever. The rules are exactly the same. It is in the basic treatment that the differentiation exists.

**Mr. S. C. Mitra** (Chittagong and Rajshahi Divisions : Non-Muhamadani Rural) : They do not want any additional privileges, because the ordinary scale of diet of European prisoners include all these and other special privileges.

**Mr. H. W. Emerson** : I cannot agree with the Honourable Member there.

**Mr. President** : The Honourable Member speaks from experience. (Laughter.)

**Mr. H. W. Emerson** : In that case, Sir, I gladly accept the Honourable Member's statement. It is not, I believe, argued that the rules for the treatment of European prisoners provide facilities which are excessive having regard to the maintenance of their health.

**Mr. K. C. Neogy** (Dacca Division : Non-Muhamadani Rural) : How do you define the word " European " in this connection ?

**Mr. H. W. Emerson** : The Honourable Member has asked me a question to which in any case I was going to give an answer. The rules relating to Europeans in the jail manuals of most of the provinces apply to any one, whether European or Indian, who has adopted the European mode of life. That, Sir, is the answer to the Honourable

Member's question. I have seen no evidence to show that the facilities granted to Europeans are excessive in regard to a reasonable standard of health. In fact, so far as the scale of diet is concerned, it is less liberal than that given in English prisons to ordinary prisoners. Now Honourable Members wish that, whatever differentiation there is should be swept aside (*Some Honourable Members* : " Yes, yes "), and the fact that the Punjab Government has not swept it aside is one of the reasons why their action has been condemned. Now there are two ways in which you can sweep away these

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differences. You can either level up or you can level down. If you level down and fix the standard of the ordinary Indian prisoner for the European, well, that unquestionably means death to the European. (Mr. T. A. K. Shervani : " So far so good ".) (Another Honourable Member : " What is the harm " ?) And I cannot believe that Honourable Members wish to urge Local Governments to a course of action which would involve the very inhumanity which they are condemning in another connection. (Mr. A. Rangaswami Iyengar : " Confine it to Indians themselves.") The other remedy is to level up ; and that is the demand in Bhagat Singh's statement. Now, for the case of the Punjab, I have made a calculation in order to find out how much it would cost to level up. To level up would involve additional expenditure of just about 40 lakhs a year. (Mr. T. A. K. Shervani : " But not 53 crores.") Perhaps I have acquired the habit of looking through the provincial end of the telescope ; but Honourable Members have to remember that, under the Government of India Act and the Devolution Rules, the administration of jails, subject to legislation by the Central Legislature, is a provincial subject and that supply is voted by the Provincial Legislative Council. Provincial Legislative Councils are jealous of any encroachment on their authority, and I am quite certain that the Punjab Legislative Council would protest, and protest most strongly, if the Government of India made to them the suggestion—(An Honourable Member : " Try once ")—that, in order to have the gratification of seeing 21,000 prisoners having the same food as 13 Europeans, additional taxation to the extent of 40 lakhs a year should be imposed upon them ! (An Honourable Member : " Then level it down.") Therefore, I do not think that this alternative solution is possible. Does it therefore follow that there is no solution ? I do not think so. I think attention has been so devoted to the racial side of this question that it has diverted thought from the essentials of the problem ; that is to say, the real difficulty is that the jail rules do not at present provide sufficient scales varying with the different standards of life of different Indian prisoners. So far as special class and under-trial prisoners are concerned, we have invited the attention of Local Governments to this matter, and I would suggest that if Honourable Members wish to achieve the object they have at heart, they and their friends should represent their views as strongly as they can to the Local Governments who are now carrying out a re-examination of the rules.

There is just one other matter to which I should like to refer before I sit down. It has been said that, whatever the Punjab Government may have done in the first instance, at all events they showed lack of statesmanship and of humanity, when they refused to release Jatindra Das unconditionally. Diwan Chaman Lall tried to make the point that the Punjab Government ought to have honoured the undertaking given by members of the Jail Committee ; but according to Diwan Chaman Lall's own statement, the only undertaking that members of that Committee gave was that they would recommend his immediate release to the Punjab Government. Whether it was their intention to recommend his unconditional release or his release on bail does not appear to me to be a matter of primary importance. Whatever may have been their intentions, both the Punjab Government and the Government of India

appreciate the efforts they made, the great trouble they took to end the hunger-strike, and I can assure Honourable Members that, when the news reached Simla that the strike was ended, members both of the Punjab Government and the Government of India were as pleased as any Member of this House. I would also remind Honourable Members that, from the beginning of the strike, the Punjab Government, from the head of the Province downwards, have been doing their utmost to find a solution ; and if when, in consequence of the efforts of the Members of the Jail Sub-Committee that solution appeared to have been found, they were unable to accept it, then you may be perfectly certain that the decision was not reached without the most careful and anxious thought. What was the position ? The Punjab Government had two courses before them. One was to withdraw the case against Das ; the other was the course they took, to make it publicly known that they would not oppose an application for bail. (*An Honourable Member* : " Very generous ! ") The reason why they could not withdraw the case will I think be obvious to Members of this House. Even if it be assumed that a particular accused is perfectly innocent or rather I should say that the case against him is ultimately not proved—for an accused is of course assumed to be innocent until he is proved to be guilty.....

**Mr. M. A. Jinnah** : Then you ought to withdraw.

**Mr. H. W. Emerson** : I gladly withdraw my first remark—so long as there is a case against him there could be no other decision because if Government in the circumstances in question were to withdraw a case against one accused in a conspiracy where there is a large number of accused concerned, then I think it is clear that both in that case and in similar cases they would give a direct incentive to accused persons to follow exactly the same course as had been followed in the case in question.

I would just like to say one more word. I have said that the Punjab Government have for weeks been doing their utmost to find a solution, and they have had the assistance of various non-officials, to whose efforts they owe a debt of gratitude. If they have failed, it is largely because the outside influences against them were too strong. I do not mean to suggest that there has been any deliberate movement on the part of anyone to encourage these people in their hunger-strike, but the exaltation of them into heroes and martyrs in the Press and on the platform can have only one effect, and if Honourable Members desire that the hunger-strike should not continue, I think the best way to attain that end is.....

**Several Honourable Members** : To pass this Bill !

**Mr. H. W. Emerson** : ...not to glorify them. I can understand your feelings of admiration and of sympathy.

**Mr. President** : Order, order. The Chair has no feelings.

**Mr. H. W. Emerson** : I can understand the feelings of Honourable Members, which are of sympathy and admiration for the sufferings which the accused are undergoing, and I appreciate the anxiety that something should be done, if possible, to bring this strike to an end before any of the unfortunate youths who are now suffering should die. So far as Government are concerned, and I refer particularly to the Punjab

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Government, I am quite certain that they will pursue every measure that is possible within reason and without the violation of fundamental principles in order to attain that end. (Loud Applause from Official Benches.)

**Pandit Nilakantha Das** (Orissa Division : Non-Muhammadan) : How will this Bill achieve that object ?

(Mr. M. A. Jinnah rose to speak.)

**Mr. President** : If the Honourable Member is going to take long, I would advise him to speak on the next day.

**Mr. M. A. Jinnah** : I do not know how long you propose to sit.

**Mr. President** : I propose to sit till half-past four and I leave it entirely to the Honourable Member to choose whether he should speak today or the next day.

**Mr. M. A. Jinnah** : I am, Sir, entirely in your hands. If you think that you must adjourn the House by half past four, I should certainly not be able to bring my remarks to a close during the time that will be at my disposal. But if you wish that I should continue now and if I cannot finish, as I am sure I shall not be able to, then I shall continue my speech the next day ; or I will sit down now, Sir.

**Mr. President** : I am in the Honourable Member's hands.

**Mr. M. A. Jinnah** : Then I should rather continue, Sir. (Applause.)

Sir, one is placed somewhat in a difficult position when one has got to deal with a speaker like the last one. It was his maiden speech, and it is the tradition of this House, that when a Member makes his maiden speech, he is in a privileged position and is not to be attacked. Whatever reasons or grounds, therefore, he may have given me for criticising him, I will not wish to depart from that tradition which, I think, ought to be maintained in this House. But I would say this that in his concluding portion he remarked that the Honourable Members may have admiration and sympathy for the accused in the Lahore case. I think I am speaking on behalf of a very large body of people when I say that, if there is sympathy and admiration for the accused, it is only to this extent, that they are the victim of the system of Government. (Hear, hear.) It is not that we approve or applaud their actions if they are guilty, which still remains to be proved. If they are guilty of the offences of which they are charged, then I am sure it is not that we admire them or approve of their actions, but, on the contrary, I am sure a large body of thinking people feel that these young men, whatever be the provocations, are misguided in resorting to actions for which they now stand charged.

Now, Sir, the Honourable the Home Member asked the House that we must approach this question without prejudice, and impartially. Sir, I am sure the Honourable the Home Member himself tried his best to follow the same principle, but has he been able to apply the same principle when he brought this Bill before the House ? Do the facts justify that ? The last speaker, whom I am not going to attack, almost gave away the case in his concluding remarks when he said that the only way to break the hunger-strike is to pass this Bill.

Well, I am not concerned at present so much with regard to the account that is given by the Honourable Member with regard to the treatment in jails of various classes of prisoners, but one thing is clear and it is this. From the statement that was issued by Bhagat Singh and Dutt what is an admitted fact now even from the speech of the Honourable Member who spoke last is that they were not given the treatment—not on racial grounds—but according to the standard and the scale which is laid down for Europeans in the matter of diet and bare necessities of life. It is not a mere question that they want to be treated as Europeans. As a matter of fact, according to the admission and the definition given by the Honourable Member who spoke last on behalf of the Treasury Benches, so far as I know, Bhagat Singh and Dutt wear topees, and their figures appeared in shorts. Therefore they ought to have been treated as Europeans. The Honourable Member in reply to a question said that whether the man is a European or an Indian—and he accepted the definition of my Honourable friend Mr. Neogy that if one wears a topee, then one is a European for the purpose of jail rules—then why should you not treat Bhagat Singh and Dutt who wear topees and European clothes as such for the purpose of treatment in jails. Why do not the Punjab Government give them the treatment that they are entitled to at once and be done with? They wear topees and they are entitled to that treatment.

What do they say in their statement which was read out? This is what they say :

“ We, Bhagat Singh and Dutt, were sentenced to life transportation in the Assembly bomb case, Delhi, on 19th May, 1929. As long as we were under-trial prisoners in Delhi jail we were accorded very good treatment and we were given good diet. But since our transfer from the Delhi jail to Mianwali jail and Lahore Central jail,”

which is represented by the Honourable Member who spoke last—the Punjab seems to be a terrible place. . . . .

**Mian Muhammad Shah Nawaz** (West Central Punjab : Muhammadan) : Don't go there.

**Mr. M. A. Jinnah** : I won't. To continue what they say :

“ we are being treated as ordinary criminals ”.

So, in Delhi they received very good treatment and in the Punjab they are treated as ordinary criminals. Surely, Sir, if the Government of the Punjab was not wanting in statesmanship, if the Government of the Punjab had any brains, they would have found a solution to this question very easily and long ago. But, Sir, it is a question—the more I examine it and the more I analyse it, I find—it is a question of declaration of war. As far as the Punjab Government is concerned, the Government do not merely wish to bring these men to trial and get them convicted by a judicial tribunal, but Government goes to war against these men. They seem to me in this frame of mind : “ We will pursue every possible course, every possible method, but we will see that you are sent either to the gallows or transported for life, and in the meantime we will not treat you as decent men.” Sir, the whole spirit behind this is that and nothing else. I do not for a moment wish to say that the Government are not bound ; in fact, it is their bounden duty, to prosecute those people that commit offences. I do not wish to say that the Government should not do everything in their power to see that their convictions are secured. But may I ask, with whom are you at war? What are the resources of these few young men who according to you have committed certain offences? You want to prosecute them, and after due trial, you want to secure their convictions.

[Mr. M. A. Jinnah.]

But before they are convicted, surely this is not a matter on which there should be this struggle, that you should not at once yield to their demands for bare necessities of life. After all, so far as the Lahore case prisoners are concerned, surely they are political prisoners and under trial. You ask me what is a political prisoner. It is very difficult to define a political prisoner. It is very difficult to lay down any particular definition. But if you use your common sense, if you use your intelligence, surely you can come to the conclusion with regard to the particular case and say, here are these men who are political prisoners, and we do not wish to give them proper treatment. We want to give them treatment as under-trial prisoners. If you had said that, the question would have been solved long ago. Do you wish to prosecute them or persecute?

Sir, I do not wish to base my opposition to this Bill on this issue of bad treatment, because this is only one aspect of the issues, or rather one aspect of the Bill before us. This Bill has got to be looked at, as far as I can see, from three points of view. The first from the point of view of criminal jurisprudence, second, political point of view or the policy of the Bill and third, treatment to the accused when they are under trial. I think it will be admitted, I think even the Honourable the Home Member conceded that by the Bill which he has brought before the House, he is introducing a principle in the criminal jurisprudence of a very unprecedented character. I do not think, Sir, there is any system of jurisprudence in any civilised country where you will find such a principle in existence as is involved in this Bill. Some of the Honourable Members who are not lawyers might not have appreciated fully the implications of this Bill. This Bill not only dispenses with the presence of the accused at the trial, but I will give you a picture as to what will happen under this Bill. Under this Bill the Government will apply to the Magistrate before whom the inquiry is going on and say :

“Here is a law which we have secured from the Legislature. Now the accused have voluntarily made themselves incapable of attending the courts and therefore you have to dispense with their presence”.

The inquiry will then proceed *ex parte* before the Magistrate. Evidence will be led oral and documentary, which will go without being tested by cross-examination. The documentary evidence will go without being even seen by the accused, against whom it is produced, and how will you identify the accused in their absence? Then we know, and particularly those who are lawyers would know, that when the Magistrate has concluded the recording of the evidence for the prosecution, under section 209 of the Criminal Procedure Code, he must ask the accused whether he has any explanation to offer with regard to the evidence which is recorded by him against the accused. It is after that statement is made, that the Magistrate has got the power either to commit or discharge the accused. That statement of the accused under section 209 is absolutely obligatory. It is not the choice of the Magistrate. The Privy Council has laid down that an omission in that regard would vitiate the whole trial. Under this Bill the accused will not be there to give any explanation to the Magistrate with regard to the evidence that has been already recorded *ex parte*.

Then, Sir, we come to important sections. Under section 287, that statement again will have to be made before the Sessions Court. There also the accused will not be present. The evidence before the Sessions Court

will be recorded *ex parte* and if it is a jury, the jury will be asked to return their verdict. If it is a case of assessors, they will be asked to express their opinion, and the Judge will pass his judgment or sentence as the case may be. I ask the Honourable the Home Member and I ask the Honourable the Law Member of the Government of India whether that will be a trial or a farce ?

**The Honourable Sir Brojendra Mitter** (Law Member) : Not a farce. The accused can always go before the Court if he chooses to. (Laughter.)

**Mr. Gaya Prasad Singh** : But what about the evidence that has already been recorded in his absence ?

**Mr. M. A. Jinnah** : I am very glad that the Honourable the Law Member has given me a reply. Then you want by this Bill really to break the hunger-strikers. (Laughter and Applause.) You want this House to give you a Statute laying down a principle generally in the criminal jurisprudence for this particular case, so that you may use it for breaking the hunger-strike in the Lahore case. Remember, you have no other case that you can cite. One swallow does not make a summer. It is the Lahore case. Well, you know perfectly well that these men are determined to die. It is not a joke. I ask the Honourable the Law Member to realise that it is not every body who can go on starving himself to death. Try it for a little while and you will see. Sir, have you heard anywhere in the world, except the American case, which my Honourable friend Mr. Jamnadas Mehta pointed out, an accused person going on hunger-strike ? The man who goes on hunger-strike has a soul. He is moved by that soul and he believes in the justice of his cause ; he is not an ordinary criminal who is guilty of cold-blooded, sordid, wicked crime.

Mind you, Sir, I do not approve of the action of Bhagat Singh, and I say this on the floor of this House. I regret that rightly or wrongly youth to day in India is stirred up, and you cannot, when you have three hundred and odd millions of people, you cannot prevent such crimes being committed, however much you may deplore them and however much you may say that they are misguided. It is the system, this damnable system of Government, which is resented by the people. You may be a cold-blooded logician : I am a patient cool-headed man and can calmly go on making speeches here, persuading and influencing the Treasury Bench. But remember, there are thousands of young men outside. This is not the only country where these actions are resorted to. It has happened in other countries, not youths, but grey-bearded men have committed serious offences moved by patriotic impulses. What happened to Mr. Cosgrave, the Prime Minister of Ireland ? He was under sentence of death a fortnight before he got an invitation from His Majesty's Government to go and settle terms ? Was he a youth ? Was he a young man ? What about Collins ? So what is the good of your putting forward this argument ? You have got a situation which you have got to meet, not by introducing and enacting measures which go to the root of the fundamental principles of criminal jurisprudence, and lightly saying, " Oh ! but it is common sense ! " Law is common sense : it is not the common sense of one individual.

**Mr. President** : I hope the Honourable Member is not inconvenienced when I ask him to resume his speech at the next meeting.

**Pandit Madan Mohan Malaviya** : Sir, cannot we go on for another 15 minutes ?

**Mr. President :** What is the idea of going on for another 15 minutes ? I can understand the House asking me to sit till 6 o'clock, but there is no idea in sitting for another 15 minutes only.

I think this Bill is very controversial and is bound to take long, and the last day of the Session is the 26th. Unless I am prepared to sit, and the House is also prepared to sit, on Fridays and Saturdays, it will be impossible to close the Session on the 26th. I know several Honourable Members want that the Session should close on the 26th. I have therefore decided at least to sit on Saturdays. The House stands adjourned till Saturday morning.

• The Assembly then adjourned till Eleven of the Clock on Saturday, the 14th September, 1929.