

# LEGISLATIVE ASSEMBLY DEBATES

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**MONDAY, 19th JANUARY, 1931**

**Vol. I—No. 5**

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## OFFICIAL REPORT



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DELHI  
GOVERNMENT OF INDIA PRESS  
1931

*Price Five Annas.*

# LEGISLATIVE ASSEMBLY.

*Monday, 19th January, 1931.*

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

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## GOVERNOR GENERAL'S ASSENT TO BILLS.

**Mr. President:** I have the honour to inform Honourable Members that the following Bills which were passed by both Chambers of the Indian Legislature during the Simla Session, 1930, have been assented to by His Excellency the Governor General under the provisions of sub-section (1) of section 68 of the Government of India Act :

1. The Indian Lac Cess Act, 1930.
  2. The Negotiable Instruments (Amendment) Act, 1930.
  3. The Indian Forest (Amendment) Act, 1930.
  4. The Indian Telegraph (Amendment) Act, 1930.
  5. The Bombay Civil Courts (Amendment) Act, 1930.
  6. The Benares Hindu University (Amendment) Act, 1930.
  7. The Hindu Gains of Learning Act, 1930.
  8. The Ajmer-Merwara Court-fees (Amendment) Act, 1930.
  9. The Mussalman Wakf Validating Act, 1930.
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## ELECTION OF THE STANDING FINANCE COMMITTEE.

**Mr. President:** I have to inform the Assembly that the following Members have been elected to the Standing Finance Committee :

1. Rai Bahadur S. C. Mukherjee.
2. Dr. Ziauddin Ahmad.
3. Mr. Gaya Prasad Singh.
4. Mr. R. S. Sarma.
5. Rai Sahib Harbilas Sarda.
6. Rao Bahadur M. C. Rajah.
7. Mr. Arthur Moore.
8. Mr. G. Morgan.
9. Mr. S. G. Jog.
10. Seth Haji Abdoola Haroon.
11. Lala Jagan Nath Aggarwal.
12. Mr. C. C. Biswas.
13. Mr. K. Ahmed.
14. Sirdar Harbans Singh Brar.

## ELECTION OF THE STANDING FINANCE COMMITTEE FOR RAILWAYS.

**Mr. President:** I have to inform the Assembly that the following Members have been elected to the Standing Finance Committee for Railways:

1. Mr. Muhammad Yamin Khan.
2. Raja Sir Vasudeva Rajah.
3. Khan Bahadur H. M. Walayatullah.
4. Mr. Muhammad Anwar-ul-Azim.
5. Mr. E. F. Sykes.
6. Maulvi Sayyid Murtuza Saheb Bahadur.
7. Haji Chaudhury Muhammad Ismail Khan.
8. Mr. Amar Nath Dutt.
9. Mr. B. R. Puri.
10. Mr. D. K. Lahiri Chaudhury.
11. Mr. Bhuput Sing.

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## THE INDIAN PRESS BILL AND THE UNLAWFUL INSTIGATION BILL.

**The Honourable Sir James Crerar** (Home Member): Mr. President, . .

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I sent some questions today . . . . .

**Several Honourable Members:** No, no.

**The Honourable Sir James Crerar:** Mr. President, before I proceed to move the first motion which stands in my name, I desire with your permission to inform the House of the intentions of Government with regard to two other items of business, of which notice has been given, though only one is on the list of business for today, namely, the motions for taking into consideration the Press Bill and the Unlawful Instigation Bill.

I think that I can without any impropriety say that I have reason to believe that the House would be ready to give an attentive and favourable hearing to the case which Government have to present for undertaking these Bills on the broad grounds of principle involved. His Excellency the Viceroy stated in his address on Saturday, the over-riding considerations of public interest that had decided him to issue, without delay, further ordinances on these subjects. His Excellency also said that Government had felt it right, on general grounds, to bring them before the Assembly by way of legislation in order that such legislation, on being duly enacted, might replace the powers which, under the existing ordinances, will remain valid for a period of six months. These considerations of public interest necessarily stand good and, so long as that is so, the necessity for the powers must likewise remain. During the last day or two, however, intimation has reached me from many quarters of the House regarding the desirability of asking Honourable Members

to proceed immediately with the consideration of these measures. It has been represented to me that the Prime Minister, on behalf of His Majesty's Government, is about to make a momentous announcement of policy which, it is hoped, will open up the prospect to all men of reason and goodwill of the possibility of the early restoration to India of conditions of tranquillity and confidence. It has accordingly been suggested that, without prejudice to any question of principle or policy, and except on grounds of immediate necessity, this is not an opportune occasion for pressing debate on matters which must necessarily excite some degree of controversy. Having regard to the fact that the ordinances afford present protection against the evils with which the legislation is designed to deal, Government do not desire to proceed immediately with the Bills, and they appreciate, moreover, the sentiments inspiring the view that has been advanced as to the undesirability of taking action at this critical juncture, which might in any way appear to prejudice the fruition of the best hopes of the wisest minds in India and in England. For these reasons the Government of India have decided to refrain from submitting at the time originally proposed the motions of which notice has been given regarding these two Bills. They are confident that the House will recognise the propriety of the course they took in seeking, with the least possible delay, the concurrence of the House in the action taken. They are equally confident that the House will appreciate that, if now, in deference to wishes so widely and so earnestly expressed, Government postpone this legislation, they must reserve their liberty to proceed further with it, according to their discretion, while the Assembly is still sitting or, if the occasion should arise when this may be impracticable, to tender such advice to the Governor General as the circumstances and their responsibilities may appear to them to require.

**Dewan Bahadur T. Rangachariar** (South Arcot *cum* Chingleput: Non-Muhammadan Rural): Sir, with reference to the statement made by the Honourable the Home Member, as one of the persons who joined in the request to the Government, I wish to make the following statement:

While the postponement of the discussion of the Bills announced by the Honourable the Home Member just now is welcome to several Members on this side of the House on the ground that it gives them the required time, which they had not, to study the Bills carefully and the literature on the subject and to give notice of motions relating to the Bills, it cannot but be regretted that the Government of India have not accompanied their statement by a further declaration announcing their determination either to suspend the operation of the ordinances to which the Bills relate, or at least their determination to issue the necessary instructions to Local Governments not to put them in force, except when they are compelled by extreme necessity to do so; for with the ordinances at work, a mere postponement of the discussion of the Bills, while it may be of some use by not adding to the bitterness of the situation, is not enough, unless accompanied by a genuine gesture, on the part of the Government, to produce that calm atmosphere, which is needed for an impassionate consideration and reception of the Premier's statement and of the decisions of the Round Table Conference in the country, or to evoke the spirit of co-operation so earnestly pleaded for by His Excellency the Viceroy the other day. While appreciating the desire on the part of the Government to meet the wishes of the Members, I would once again

[Dewan Bahadur T. Rangachariar.]

impress on the Government the necessity for complying also with the other portions of the request already made to the Government and indicated above. In order to avoid any misapprehension of our attitude, I wish to add that our attitude towards both the Bills, as at present advised, I may assure the Government, will be one of opposition to the principles underlying both the Bills, and of strenuous opposition to the former.

**The Honourable Sir James Crerar:** I have listened with the greatest attention to what has fallen from the Honourable and learned gentleman, but I regret that I am not able to add anything to the statement which I have just made.

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### ELECTION OF THE DEPUTY PRESIDENT.

**Mr. President:** Before the regular business of the House is taken up, I should like to announce that, in pursuance of Order 5 of the Standing Orders of the Legislative Assembly, I have fixed Thursday, the 22nd January, as the date for the election to the office of Deputy President of this House. Each Member wishing to propose another Member as a candidate for election will ascertain that the candidate is willing to serve, if elected, and will hand to me not later than 12 Noon on Wednesday, the 21st January, a notice showing the name of the candidate signed by the proposing Member himself and by some other Member as seconder.

As soon as possible after the notices have been handed to me. I propose to read out the names of the candidates, together with their proposers and seconders, and if there is more than one candidate, to take the ballot on Thursday, the 22nd January.

The Secretary will issue a circular informing Honourable Members of the method by which the ballot shall be held.

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### STATEMENT OF BUSINESS.

**The Honourable Sir George Rainy** (Leader of the House): With your permission, Sir, I should like to make a brief statement about the business of the House.

Having regard to the announcement made by my Honourable colleague, the programme for this week's Government work naturally requires considerable modification.

On Wednesday we shall take any business that may be left over from Tuesday, and in place of the Press Bill and the Unlawful Instigation Bill, the Government propose on that day to proceed with my Bill further to amend the Indian Merchant Shipping Act, and I shall make a motion that the Bill be referred to a Select Committee. The Honourable Sir George Schuster will thereafter move that the Bill to give effect to the International Convention for the suppression of counterfeit currency be taken into consideration and also that the Bill be passed. Thereafter, I shall move the remaining motions necessary for passing the small Bill which I introduced on Friday last to amend the Indian Ports Act, 1908. Finally, a motion will be made for leave to introduce a Bill to define and amend the law relating to partnership.

It is not expected that this list of business, which is all that Government have ready at present, will occupy this House for more than a portion of Wednesday, the 21st. If this anticipation is correct, there will be no business before the House on Thursday, the 22nd, except the election of the Deputy President, should an election become necessary, and time will thus become available for the sittings of the Standing Finance Committee and the Railway Standing Finance Committee. Every effort will be made to accelerate the production of the remaining Bills which Government propose to bring before the House this Session, so that the House may not be left without enough business to transact.

### THE PUNJAB CRIMINAL PROCEDURE AMENDMENT (SUPPLEMENTARY) BILL.

**The Honourable Sir James Greer** (Home Member): Mr. President, I beg to move that the Bill to supplement the Criminal Procedure (Punjab Amendment) Act, 1930, be taken into consideration.

I think, Sir, that it will require very few words from me to commend this motion to the favourable consideration of the Assembly. The facts in connection with it are briefly these. When the measure which this Bill is designed to supplement was under consideration in the local Legislature, an engagement was given on behalf of the Government that the Government of India would take the earliest possible opportunity to lay before the Legislative Assembly provisions for the right of appeal from any conviction by the tribunals constituted by the local Act and for confirmation by the High Court of any sentence of death that might be passed. It is unnecessary for me, I think, to emphasise before the House the desirability and propriety of the introduction of these provisions, and I do not propose to detain the House at any length on that point. I have no doubt that the Assembly will support the Government of India in the public undertaking which they have given with regard to this matter. Sir, I move.

**Lala Jagan Nath Aggarwal** (Jullundur Division: Non-Muhammadan): With your permission, Sir, I wish to say a few words in opposition to the motion that has been brought forward before the House.

My reason for opposing this apparently harmless motion is simple. Honourable Members must have noticed that in this Act IV of 1930, passed by the Punjab Legislative Council, and which received the assent of His Excellency the Viceroy and Governor General on the 10th November, 1930, and under which a tribunal has been constituted in the Punjab for the trial of certain offences by three Commissioners, a certain section has to be incorporated by this Supplementary Bill to make provision that persons convicted by that tribunal shall have the right of appeal and that the High Court shall have the power to confirm sentences of death passed by that tribunal. Sir, it is a curious provision if I may say so. My objection to this Bill is briefly this. If the whole measure which has been passed by the Punjab Legislative Council, together with this provision for appeal, had come before this House, then this House would have had an opportunity of examining the provisions of the measure and

[Lala Jagan Nath Aggarwal.]

expressing its opinion as to the desirability of effecting such a radical change in the criminal law of the land. Situated as we are, I say that an undesirable measure from my point of view, making an inroad into the criminal law of the land, has been left to be passed by the Punjab Legislative Council. That measure is now a part of the law of the Punjab, and it is only one provision, this provision as to the right of appeal—which I am free to confess is one of the saving graces of this otherwise unfortunate measure—that has been left to be passed by this House.

Now, Sir, we are in this position. If we object to this Bill, we will be told, "You are objecting to the only good provision, according to yourself, in this measure". If we do not object to it, then we shall be deemed to have tacitly consented to the whole measure by consenting to the provisions in this Bill. Again, Sir, there is another oddity about the situation. When this measure came before the Punjab Legislative Council, the people objected. The Government gave an assurance—the Honourable Sir Henry Craik, the Leader of the Punjab Legislative Council, gave an assurance—that a Bill would be passed by the Legislative Assembly giving a right of appeal. One of the Members of the Punjab Legislative Council objected saying, "How can you say that a Bill like that will be passed? You can only say that a Bill like that will be introduced". Then an assurance was given by the Honourable Member for the Punjab Government that a Bill like that would be passed, and if necessary, would be certified. Therefore, Sir, we are in this position, that, without our consent to it, this Bill has already been passed. We are supposed to have given our consent already, and in the schoolboy's phraseology, the Government are telling us, "If you do not behave well, the rod will be applied to you. The thing will be certified". That is the oddity of the situation. If we had all the provisions of that measure before us, a good deal might be said, but for the present, with your permission, Sir, I would only say this. We object to this truncated measure being brought forward in this House firstly, because we are asked to pass this measure without having had an opportunity of examining the whole of the provisions and scope of the measure, and secondly, because our consent has, so to say, been parted away by somebody behind our back, without giving us any opportunity of expressing our opinion thereon. In these circumstances, I submit that the House should throw out this Bill, which is a short and small Bill, and request the Government to bring forward a consolidating measure, a complete measure incorporating the provisions of the Bill as passed by the Punjab Legislative Council and also any other provisions which the Government may think fit to add—relating to the right of appeal. Then the House will be in a position to discuss the whole measure and to pass it in whatever form it appears to this House to be fit and proper.

**Mr. B. R. Puri** (West Punjab: Non-Muhammadan): Sir, in support of what my Honourable friend over there has already urged before the House, I wish to add a few observations. We have been indeed placed in a very awkward position at the present juncture by being called upon to add a clause to a measure, the nature and character of which remains a sealed book. We have not been taken into confidence, Sir, as to what the main features of that measure are, and we are asked in a blindfolded manner to give it our indirect assent by adding a clause to it. Whatever

may be the merit or the virtue of that clause, I submit we are entitled to know before we associate ourselves with that measure, as to what that measure is. Now, it is hardly fair to this House that we should be called upon to associate ourselves with a measure regarding which we have not got the least idea. If we were to go into the merits of that measure, I have no doubt I should be able to convince this House that it is a most reactionary measure. It really denies to a prisoner the elementary privileges which he has already earned during a long period in which the struggle for the recognition of the rights of a prisoner have gone on and I submit that it is only fair to this House that we should be allowed to go into the merits of the measure, before the House is called upon to give its decision with regard to the particular clause.

Now, so far as the merits of that measure are concerned, I may be permitted to point out that almost at the very threshold we find that, although it happens to be a special and an emergency measure, its life is fixed for two years, with power given to the Local Government to prolong its applicability for another period of three years. Whoever, Sir, has heard of an emergency measure being perpetuated for a period of five long years? Apart from that, all sorts of offences, whether they have been committed before or after the promulgation of the Act, have been brought within its operation. What it means, Sir, is this—that if an offence was committed before this measure was even thought of by the local Legislature and a trial was actually proceeding in a court of law under the ordinary procedure prescribed by the Criminal Procedure Code, the case can be taken out of the hands of that court and made over to this special tribunal. I consider that that is tantamount to denying justice, inasmuch as the measure passed by the local Legislature does not sufficiently safeguard the accused's interests. I submit that it would be a very great hardship for an accused person if his case was thus taken out of the hands of an ordinary court and made over to a tribunal created under the Act with all the defects that that Act embodies.

Now, Sir, when we come further to examine the main provisions of that Act, we find, to start with, that the committal procedure has been completely wiped out. As we all know, the procedure prescribed under the Code is that before a person is called upon to meet a grave charge like murder or any other serious offence in a court of Sessions, he has got the privilege of fighting out his case before a magistrate in inquiry proceedings, and he has the chance of convincing the magistrate that the charge against him is unfounded and frivolous and of asserting his innocence, before the matter goes further. He has lost that chance. Under the Punjab Act, that procedure has been completely wiped out.

**Mr. Arthur Moore** (Bengal: European): On a point of order. Is it in order to discuss the provisions of an Act passed by the Punjab Council, which is not before us for consideration today?

**Mr. President:** I hold that the Honourable Member is quite in order on the ground that the present Bill supplements the Punjab Act by providing an appeal to the High Court and I think that any Honourable Member desiring to do so can give reasons why he is opposing this Bill. In doing so, he can refer to that Act.

**Mr. B. R. Puri:** The committal procedure has with one stroke been done away with and the matter goes straight before the tribunal. Now, the House will be astonished to learn that although the status that has been

[Mr. B. R. Puri.]

given to this tribunal is that of a Sessions Court, the procedure which has been prescribed is not the procedure of a Sessions trial. The procedure for the trial is the procedure prescribed for a warrant case. That, I submit, is really taking away one of the most precious privileges which an accused person enjoys. As we are all familiar, the trial before a Court of Session must under the existing law be conducted either with the aid of accessors or with the aid of a jury. In cases of a racial character, an accused person has got the right to claim a jury. He has further got the right to claim. . . .

**Mr. President:** Order, order. I have ruled the Honourable Member in order in referring to the Punjab Act, but I do not think that it is necessary for the purpose of this Bill to go into such detail in regard to it. The time of the House is valuable, and I would appeal to the Honourable Member to deal briefly with the provisions of that measure.

**Mr. B. R. Puri:** Now, Sir, I shall briefly allude to some of the main features of that Act without going into their details. In order that the House may be in a position to realise the enormity of this procedure, I would like to place before you a specific case which is now actually pending before an ordinary tribunal in the Punjab, and which but for the absence of an appeal clause would have been at this stage tried by the special tribunal created by this Act.

**The Honourable Sir James Orerar:** Will the Honourable Member be in order in referring in any degree to a matter which, on his own statement, is still pending before a court of law?

**Mr. President:** No reference can be made to a case which is *sub judice*.

**Mr. B. R. Puri:** With reference to the warrant procedure, I will briefly point out how this warrant procedure, instead of expediting the proceedings, is likely to protract them. The main object and the underlying principle of that Act was and is that, in order to expedite the disposal of cases of this character, a procedure was devised under which cases would be concluded earlier than under the ordinary procedure. Well, now, that desire may be a very commendable desire and I have no grievance against that. But I am certainly entitled to show to this House that in the guise of that expedition, certain most valuable privileges have been denied to accused persons. Now, for instance . . .

**Mr. President:** Order, order. I have allowed the Honourable Member to deal with that Act for reasons which I have already explained. I should like to bring to the notice of the Honourable Member that the Bill before the House contemplates providing an appeal to the High Court. It is to my mind relevant to say that though in favour of an appeal to the High Court the Honourable Member wishes to oppose this Bill as a protest against the Punjab Act. For that purpose I do not think it is necessary that Honourable Members should go into such details, as the Honourable Member is doing. I would ask him not to be so long in putting forward his reasons for opposing this Bill. It has to be remembered that the Bill before the House is a Bill for providing an appeal to the High Court and nothing else.

**Mr. B. R. Puri:** Well, Sir, I very much regret that, in order to make my position clear, I have yet to place before the House some further facts. The first point I should like to place before the House is this. Are we supposed to assent to this particular clause without, as I submitted in the beginning, knowing the nature or the character of the Act itself? It is open to us, after the whole matter is threshed out, to come to the conclusion that no appeal is needed, that is quite conceivable. But then, on what material are we going to decide whether the appeal should or should not be allowed unless we go into the merits?

**Mr. B. Das** (Orissa Division: Non-Muhammadian): Quite so.

**Mr. President:** The Honourable Member will be perfectly relevant if he convinces the House that no appeal is needed. (Laughter.)

**Mr. B. R. Puri:** It will be for the House later on to come to any conclusion. But I have to discuss the material which really is relevant for the purpose of coming to a right conclusion. I do not for a moment urge that no appeal should be provided because, if the Bill is bad from beginning to end, there might be some consolation in having some sort of clause added which might remedy the defects of that Act, but suppose tomorrow, Sir,—the House will pardon me for a little digression,—a Bill was brought in wherein a local Legislature were to make a law that every head constable or Sub-Inspector of Police could try cases on the spot and pass all sorts of sentences, and for the purpose of an appeal clause being added the matter was brought before this House, would we be justified in not looking into and examining such act which conferred upon such persons such wide powers?

**Mr. President:** I am sorry to interrupt the Honourable Member. I think I have made my position perfectly clear. I have allowed Honourable Members to deal with the Punjab Act by way of reference, in order to show to this House that they wish to oppose the present Bill; and I want again to emphasise that the only measure before the House is the present Bill and not the Punjab Act. I would be glad to allow any Honourable Member to give his reasons by way of illustration why he wishes to oppose this Bill. But obviously the Punjab Act is not before this House; and it is unnecessary to bring forward all the provisions of that Act merely for the purpose of forming an opinion as to whether the House is prepared to accept the Bill or to reject it. I hope the Honourable Member will not pursue the lengthy observations he is placing before the House in regard to the provisions of the Punjab Act.

**Mr. B. Das:** Sir, I would like to point out that we have established a convention in this House that, at the consideration stage, we can discuss a Bill a little more in detail and that we can digress. I would like to appeal to you, Sir, on the first day that you are occupying the Chair . . .

**An Honourable Member:** On a point of order. . . .

**Mr. President:** Order, order. I know perfectly well what the proper procedure is; and I may at once tell the Honourable Member that if anyone wishes to address the House in the minutest detail in regard to a Bill that is before the House, I will not prevent him from doing so. If however any Honourable Member wishes to bring forward any matter which is not directly before the House, I will allow him to do so, provided it is relevant. No debate can proceed on the basis as if the Punjab Act was before the House for consideration. That I cannot and will not allow. (Applause.)

**Sir Hari Singh Gour** (Central Provinces Hindi Divisions : Non-Muham-madan): Sir, as I understand this Bill, it is called a Bill to supplement the Criminal Procedure (Punjab Amendment) Act, 1930. Consequently it must be treated for the purpose of argument as part of the Punjab Act. It is a Bill intended to supplement the provisions of that Act; and while I am perfectly certain that my Honourable friend does not wish to enlarge upon or go minutely into the provisions of that Act, I hope, Sir . . . .

**Mr. President:** The Honourable Member is aware that when the point of order was raised I ruled that it was in order.

**Sir Hari Singh Gour:** Yes.

**Mr. President:** Then nothing further need be said about that.

**Mr. B. R. Puri:** After that ruling from the Chair, I trust I am entitled, Sir, to go into the merits of the Act with a view to convince this House whether an appeal should or should not be provided.

**Mr. President:** I do not think I can make myself clearer than I have tried to do. The Honourable Member can refer to that Act. I ruled him in order, but he has to bear in mind that the Punjab Act, as a Bill, is not before this House to be discussed as if we were considering the provisions of that Bill. If the Honourable Member refers to that Act, he can do so, but his observations should be such as can be useful to the House in the consideration of the Bill under discussion.

**Mr. B. R. Puri:** Well, Sir, I submit that so far as the Punjab Act is concerned, it is a measure which from beginning to end is of such a character that, if it had come before this House, it would not have been tolerated for a moment. But that is not the point; that question we are debarred from considering in this House, as has been pointed out by the Chair, and I must obey the command of the Chair so that that matter goes. But, Sir, I assert that we are entitled, in order to be able to dispose of the question that is now before this House satisfactorily, to look into the merits of that Act at least for this limited purpose; and having regard to this consideration, I submit I should be allowed to touch upon and deal very briefly with some of the salient features of the Punjab Act. As I have already pointed out, so far as the committal proceedings are concerned, that is done away with. So far as the warrant procedure is concerned, that is a procedure which deprives an accused person of his right of being tried by a jury or assessors as the case may be.

I pass on now very briefly to certain other provisions. There is a provision in the Act, which permits the admission of certain hearsay evidence. Now, that being so, I submit, without asking this House to review or repeal in any way or amend or improve that Act, for that is beyond us, that an Act which actually allows the use of evidence, which under the existing law is not permissible, to be led would really promote protraction rather than expedite matters, and the professed object of the Act would be completely frustrated. Therefore I have got to bring to the notice of the House such provisions of that Act as throw a considerable amount of light as to what the real internal object underlying that Act is. It is not for the purpose of expediting the proceedings that that Act has been introduced, but with a view to deprive the accused person of some of his most valuable rights. Another instance, that the Act in reality prolongs the pro-

ceedings rather than in any way curtailing them, is that, so far as the warrant procedure is concerned, it provides a double set of cross-examination, whereas if the Sessions Court procedure had been followed, a single cross-examination is all that is allowed under the law. These instances give us the true insight into the underlying objects of the Act made by the Punjab Legislature. It would be absolutely essential for this House carefully to look into those provisions, as I have submitted already, if not with a view to improve them, at least with a view to satisfy ourselves whether it is a measure with which this House would like to associate itself at all. It is a measure which is really indefensible, and as such we would be stultifying ourselves if we at all allowed our own seal to be put upon it.

There is one thing more I would like to add and it is this. As has already been pointed out by my Honourable friend, a sort of an undertaking has already been given. Now what does that undertaking mean? What does it really convey? It was conveyed to the local Legislature at the time when this Bill was presented in that House that, inasmuch as the local Legislature was not empowered to confer any jurisdiction upon the High Court regarding appeal, that appeal would hereafter be provided by this Honourable House. Now, it is in pursuance of that undertaking that this measure is now before us. Sir, I submit, it is very unfair to this House, which has got the right to judge for itself and to give its decision, that its judgment should have been thus pledged already.

Possibly the Punjab Government had an eye on the ultimate power of certification which can be invoked as the last resort. That power cannot be denied—it is always there—although opinions may differ as to the wisdom of using it too frequently.

**Sir Abdur Rahim** (Calcutta and Suburbs: Muhammadan Urban): It is perfectly plain, Sir, that the situation that has been created by this measure is extremely anomalous. The House is not supposed to discuss the merits of the Punjab Act which it is required to supplement by this Bill. I take it for granted that the Act was passed by the Punjab Legislature itself and not by certification by the Governor of the Punjab. It would have been much more satisfactory if the Honourable Member in charge of the Bill had given the House some idea of the salient provisions of the Punjab Act. (Hear, hear.) It is much to be regretted that he has not said one word about the procedure adopted in the Punjab Act for the trial of the class of cases with which it deals. Unfortunately, however, we cannot deal with the merits of that Act, though we have a general idea that it is an Act which is out of the way of the ordinary law. (Hear, hear.) It is called an Emergency Act, but is for five long years. This is a new definition of emergency (Laughter.) which we have learnt. But, Sir, all the same, the Act is there and the supplementary Bill is intended to provide a right of appeal to the High Court and also in cases of sentence of death gives power to the High Court to annul the sentence or rather to refuse to confirm the sentence if the sentence is not in accordance with evidence or law. That is the supplementary Bill now before the House. But we do not know how far the powers under the procedure provided in the Punjab Act would be effective or illusory. I know some of the powers given under some of the special Acts to the High Courts are extremely illusory and I do hope that in this case at least the powers are of a somewhat real character. Any way, Sir, it cannot prejudice an accused person to have the right of appeal to the High Court. At any rate he can

[Sir Abdur Rahim.]

have the facts reviewed by another tribunal, a higher tribunal, and a tribunal which does enjoy the confidence of the country. That in itself is a gain to the prisoner (Hear, hear.) and I should be sorry indeed, now that the Punjab Act is in force and we cannot deal with it in any way, to deprive any prisoner, especially a prisoner who has been tried under the special procedure, of the right of appeal. I doubt very much whether any Honourable Member of this House will vote against a provision of this character. That is all I have to say.

**The Honourable Sir Brojendra Mitter** (Law Member): Sir, much of what has been said by the first two speakers this morning might with cogency and with relevancy have been said when the Punjab Bill was before the Punjab Legislature. But in my submission all that is irrelevant so far as the present measure is concerned. We cannot here . . .

**Maulvi Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadan Rural): Is it permissible for an Honourable Member to argue against the ruling of the Chair, Sir? You have said it was relevant.

**Mr. President:** Order, order. It was perfectly open for the Honourable Member to have risen in support of the point of order raised by the Honourable Member Mr. Arthur Moore. At this stage, I will not allow any Honourable Member to say that a particular speech or discussion is irrelevant after a point of order had been raised on that issue and the Chair had ruled that the matter is relevant and in order. (Hear, hear.)

**The Honourable Sir Brojendra Mitter:** I beg your pardon, Sir. I said, 'much of what has been said'. I did not say the speeches were irrelevant. Much of what has been said by the first two speakers could have been said with cogency and with relevancy in the Punjab Council. I never intended to question for a single moment the ruling of the Chair. That was far from my intention, Sir. In dealing with the arguments which have been adduced, I was going to differentiate between what was relevant and what was irrelevant. The Chair ruled out the irrelevant and these arguments were not pursued. It was only to introduce that that I made mention of irrelevancy. It was not in the slightest degree in my mind to question the ruling of the Chair.

**Mr. President:** I accept the explanation.

**The Honourable Sir Brojendra Mitter:** Here on the present occasion, Sir, we cannot in any way amend or abrogate the Punjab Act. That is perfectly clear.

**Maulvi Muhammad Yakub:** That is the most unfortunate part of it.

**The Honourable Sir Brojendra Mitter:** It may be unfortunate but it is the fact. We cannot touch the Punjab Act in any way here. If the Punjab Act was necessary, there was a certain lacuna in it which the Punjab Legislature could not provide for. It is necessary for us to fill that lacuna. It is one of the objects of the present Bill to fill that lacuna. The Punjab Legislature could not deal with the jurisdiction of the High Court, and therefore to give the accused a right of access to the High Court we had to bring in this measure. That is the necessity for this measure. If this measure was necessary, as the Punjab Legislature thought it was necessary, we are here to fill the gap. If the measure is oppressive,

and it has been suggested that the measure is oppressive, we are here to mitigate the rigours of that oppression. It is for that purpose that this Bill has been brought forward. Sir, a similar measure was enacted in Bengal in 1925 as the Punjab has passed. After the Bengal Act, it was necessary for the Central Legislature to provide for an appeal to the High Court. We are doing the same thing here.

Sir, I shall mention one other fact in this connection apropos of the charge of the measure being oppressive, and it is this. I have myself been associated with a number of trials in Bengal under the Bengal Act of 1925. There were in my time, when I was Advocate-General of Bengal, several trials under the special procedure laid down by the Bengal Act. Not in one instance was the decision of the special tribunal to my knowledge reversed by the High Court. Not in one instance was there any adverse comment in the public press that the trial was either unfair to the accused or that the special procedure in any way denied to the accused any of the rights which the accused ought to have for the proper defence of his case.

**Mr. Gaya Prasad Singh** (Muzzaffarpur *cum* Champaran: Non-Muhammadan): The decisions were as one-sided as the evidence.

**The Honourable Sir Brojendra Mitter**: There was no comment, Sir, in the public press to my knowledge.

**Mr. Amar Nath Dutt** (Burdwan Division: Non-Muhammadan Rural): Question!

**The Honourable Sir Brojendra Mitter**: There was no comment to my knowledge in the public press that any accused was denied any opportunity of adducing any evidence which he wanted to place before the tribunal. So far as the administration of the Bengal Act was concerned, and the trials held under the Bengal law were concerned, there was no grievance whatsoever to my knowledge either from the accused or the public in general.

**Mr. B. R. Puri**: Sir, is the Honourable Member entitled to import his personal knowledge in connection with matters . . . . . (The rest of the sentence was drowned in laughter.)

**Mr. President**: Certainly he is.

**The Honourable Sir Brojendra Mitter**: I do not deny for a single moment that the Bengal Act was with a certain section of the people extremely unpopular. But the working of the Act soon reconciled that section to the provisions of the Act, with the result that, when in 1930, that very measure was brought before the Bengal Council for re-enactment, it was passed by that Council by an overwhelming majority.

**Mr. S. C. Mitra** (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Then why don't you have special tribunals in all provinces and for all offences if they work so well?

**Mr. Gaya Prasad Singh**: And permanent tribunals too!

**The Honourable Sir Brojendra Mitter**: I will answer that. Sir, I have not got the figures of the voting in the Bengal Council, but I find that the Bengal measure was passed last year without a division. That shows that the previous five years' working of the Bengal Act had not been unsatisfactory.

**Mr. B. Das:** I am sorry for the Bengalis!

**The Honourable Sir Brojendra Mitter:** Now, Sir, in all these matters I take it that it is not an unwise thing to be guided by past experience. Five years' working of the Act in Bengal was not unhappy, and it is hoped that the experience in the Punjab will be equally happy. (Laughter.)

Sir, I shall answer the question which was put to me by my Honourable friend, Mr. Mitra, why we do not set up special tribunals for all offences. The answer is simply this, that we are not dealing with ordinary crimes but with extraordinary crimes. For ordinary offences there are the ordinary tribunals. These terrorist offences are extraordinary; they are against the traditions and sentiments of the people of this country. They are an exotic; and in order to deal with that particular species of crime, it is necessary to set up a special procedure and that is what Bengal has done and that is what the Punjab has done.

Sir, I will not detain this House any more in justification of the measure. That is not my function here. My function here is to speak on this Bill, and all I say is this, that if the Punjab Act is oppressive, we are seeking to mitigate its rigours. If the Punjab Act is necessary, we are here to improve its usefulness. Having regard to these obvious objects, it really passes my comprehension why there should be any opposition at all. I can well understand that Honourable Members who come from the Punjab, and who do not like the Punjab Act, wanted an opportunity to vent their feelings. They have done so and I hope they will leave it at that.

**Maulvi Muhammad Yakub:** Sir, the Punjab has always been a source of trouble to us. It has been a source of trouble to us in the Round Table Conference and it is now again a source of trouble to us in this House. I wish we had the power to exclude the Punjab from British India. Unfortunately we do not possess that power as yet, but I hope that after the new reforms have come into existence we will have that power and we will utilise it. As it stands at present, although I am unable to go so far with my Honourable friends from the Punjab as to say that we entirely oppose this Bill, I quite agree at the same time with the Honourable Members, who have said that the Bill is so mischievous, that we cannot silently go into the lobby on this Bill because a silent vote on this Bill is really calculated to misinterpret our position. Therefore it is necessary that we should make our position quite clear. Without going into the details of the Punjab Act, Sir, let me tell you that we, on this side of the House, entirely dissociate ourselves from that Act and that we strongly protest against such an Act, as the Punjab Criminal Law Amendment Act, being placed on the Statute-book. (Hear, hear.) We want to make it clear that our association with the present Bill in any way should not be understood to mean that we approve of the Punjab Act. At the same time, this House will not, on principle, be justified in throwing out or opposing the present Bill, which gives a right of appeal and review to and by the High Court. On principle the House should not oppose any Bill which gives a right of appeal to the prisoner. But I wish to make it clear that, by passing this Bill, I do not think we are going in any way to diminish the rigour of the Punjab Act or are doing anything in favour of the prisoner, because the method of taking evidence under that Act and the one-sided character of trial will make it impossible for the High Court to interfere with the

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judgment of the tribunal. There will be nothing before the High Court which would justify the High Court in interfering with the judgment of the lower court, because the material on the record would not justify any interference. I cannot therefore agree with the Honourable the Mover of the Bill, or the Honourable the Law Member, when they say that this Bill will in any way mitigate the rigour of the Punjab Act. But on principle we do not oppose this Bill; it is on principle alone that this House cannot reject the Bill which gives a right of appeal to the prisoner, however poor and inadequate that right may be. With these words, Sir, I want to explain my position.

**Mr. Arthur Moore:** Sir, I think Maulvi Muhammad Yakub has really touched the point. The whole point surely is, how will the action of this House be interpreted if we throw out this Bill, or if we pass it. And it is on that ground that I would like to appeal to Mr. Aggarwal to withdraw his opposition, because I understand the feelings of that section of the House concerning the Punjab Act. We know that they oppose and disapprove of that Act. Now, the whole question is whether, by passing this Bill (which Mr. Aggarwal himself said represented a redeeming feature and tended to improve that Act), we are in any way committing this House to approval of the principles of the Punjab Act. Sir, what becomes of provincial autonomy if this view were to be established? How is provincial autonomy to become a reality, if Honourable Members say that the Punjab should not be allowed to pass its own Acts, or if they say that this House, by dealing with a subject with which it is competent to deal and ought to deal, but which has a bearing on provincial legislation, is thereby taking upon its own shoulders the burden of responsibility for something for which it has not the slightest responsibility? Sir, could paradox go further than this—that when we get a Bill of which I think every Member of this House in his heart of hearts approves, a Bill to give a right of appeal, we should be asked to throw it out as a gesture, and an Honourable Member should go so far as to say that he would prefer to see it made law by an act of certification? Surely, that is very damaging to us in this House. We wish to increase our own powers; we wish to establish for ourselves a position. I suggest that if we were to follow the advice of Mr. Aggarwal, we should be damaging our own position, and we should certainly damage the prestige of this House in the eyes of the country by saying that we did not wish to provide for this right of appeal. On these grounds I would appeal to Mr. Aggarwal not to press his opposition to a division, because we perfectly understand his opposition to the Punjab Act which he has made clear.

**Sir Hari Singh Gour:** Sir, I think the Honourable the Law Member and the Honourable Mr. Arthur Moore seem to be at cross purposes though both are in favour of this Bill. I would ask the Honourable the Law Member one question, and that is a question which clinches the whole case. That question is, will the appeal to the High Court be effective if the procedure in the trial court has been such as is not in conformity with the ordinary provisions of the law? I submit that is the main question; what Mr. Aggarwal and Mr. Puri have been contending is though this provision for the appeal to the High Court is enacted by this Bill, it is purely a nominal provision and that the accused has been deprived of the right of appeal to the High Court by the special procedure of trial, inasmuch as there would be no commitment, inasmuch as the Commissioners will be appointed by the Local Government and not by the High Court, inasmuch as,

[Sir Hari Singh Gour.]

in defiance of the provisions contained in the Evidence Act, section 10 of the Punjab Act provides for the admissibility of evidence taken in the absence of the accused and without giving him an opportunity for a cross-examination . . . .

**The Honourable Sir Brojendra Mitter:** Shall I answer the Honourable Member's question?

**Sir Hari Singh Gour:** You can answer as soon as I have finished.

**The Honourable Sir Brojendra Mitter:** I will answer it now because it is very short . . . . .

**Mr. President:** Not unless the Honourable Member is prepared to yield.

**Sir Hari Singh Gour:** I submit therefore that these are departures from the ordinary procedure; and in so far as these are departures from the ordinary procedure, they deprive the accused of the effective right of appeal to the High Court. My Honourable friend the Law Member said that the Bengal Criminal Law Ordinance was passed in 1925, and that he as the Advocate-General of Bengal prosecuted many cases, and there were appeals to the High Court, and the High Court did not interfere in a single case. Sir, that is the unfortunate predicament in which the Punjab appellant would be placed. ("Hear, hear." from the Nationalist Benches.) He is tied hand and foot by the arbitrary trial and then buried into the sea with a direction that he might swim ashore. It would be impossible; that is the complaint of the Punjab Members who have spoken on the subject. What they complain of is this; that this Punjab Act, by its special procedure, deprives the accused of the right of jury trial, deprives the accused of the right even of having assessors at his trial and deprives him finally of the salutary provisions of the Evidence Act in the cases mentioned in section 10. The Punjab Act makes a clean sweep of the general law enacted in the Criminal Procedure Code, which entitles an accused to hear and cross-examine witnesses before the committing court. Depriving him of these provisions, what has the High Court to do in appeal? The High Court may say, "Well upon this record as I find it, you are guilty". But should it have been the record as the High Court finds it? That is the main question in the whole case, and that is the gravamen of the complaint of my friend Mr. Jagannath Aggarwal and Mr. Puri and on which the Honourable the Home Member has not given any answer at all. And the Honourable the Law Member, when he ran to the rescue of the Home Department, all he could say was that everybody was happy with the Bengal Act and everybody would be happy under the Punjab Act. (*An Honourable Member:* "Let us make happy the whole of India!") I am quite sure when he said that he spoke with his tongue in his cheek, because if he was to meet us in the lobby, I am perfectly certain he would say, "I do not like this infernal Bill, what can I do?"

**The Honourable Sir Brojendra Mitter:** I do like it.

**Sir Hari Singh Gour:** He said, oh, this Bill is intended to mitigate the rigour of the Punjab Act. I am quite glad that it is intended to mitigate the rigour of the Punjab Act, but the mitigation is illusory; it is insufficient, it is ineffective, and it is because it is illusory, because it is ineffective, that we are entering a protest against the introduction of a

measure like this and against the procedure adopted by the Treasury Benches in asking our consent to piece-meal legislation when the whole piece of legislation should have been brought before us and we should have had the opportunity of examining it, clause by clause, and seeing how these interdependent provisions will work either to the prejudice of the accused or to the prejudice of the prosecution. That is a comprehensive view which we would have taken of the whole Act. That privilege we have been deprived of. We have protested before, and we wish to protest once more, that so long as the Central Legislature has the power of legislating for all India, we should be given the power of looking at the Bill as a whole, and not partially, and saying that, "The rest of it is screened from your view, you can have a peep at it, but you cannot disturb it, and that so far as the rest of it is concerned, well, we are going to give you some sort of right of appeal". Now, Sir, we are not satisfied with that. If the accused is to have a real right of appeal, that right of appeal is contingent upon a right of trial. How is the High Court to go into the question? Supposing an unfortunate accused is convicted and he goes to the High Court and says, "I have been convicted in defiance of every known provision of the Statute; the Commissioners have been appointed by the executive and they have been called upon to discharge a judicial function. That power of appointment of judicial officers should have been given to the High Court. There is no provision in the local Act for the transfer of the case to another tribunal howmuch-soever the Commissioners might be prejudiced against the accused and whatever may be their other shortcomings. A summary of the evidence is to be given to the accused and in that summary the accused has been deprived of the right of examining the evidence in that detail to which he was entitled. Witnesses have not been examined before the committing Magistrate and therefore the accused have not had the opportunity of either seeing them or hearing them or cross-examining them", and under the provisions of section 10 of the Punjab Act in certain cases where they find that a man is not easily obtainable and in the circumstances mentioned there, even evidence given *ex-parte* might be used against the accused. And last of all, Sir, I would appeal to every Englishman to stand by us, because I am quite sure that when we were dealing with the Criminal Procedure Code in 1922, the Englishmen in a body said, "We want our right of jury, that is our birthright", and they have got it. That right was extended to the people of India. That right which you and your forefathers have enjoyed ever since the days of the *Magna Charta*, that right has been extended to the people of India under the amended Code of Criminal Procedure. That right has been taken away in this case. Put yourself in the position of those unfortunate accused of the Punjab who have been deprived of this most valuable right of being tried by their own countrymen, by their own jury.

**Mr. Arthur Moore:** Is that not an additional reason why they should have a right of appeal?

**Sir Hari Singh Gour:** My friend has not understood me. Under the Code of Criminal Procedure a finding of fact is given by the jury; where a man has done a particular act, it is called a question of fact, and on that the jury's verdict is final. The accused has been deprived of that verdict which the jury would have given for or against him, and that is one of the fundamental principles and rights which was fought for at

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Runnymede, for which your forefathers had shed their blood, and for which the people of India have been asking for the last 40 years, and in the first reformed Legislative Assembly we were able partially to get it. That right you have taken away by the Criminal Procedure Code (Amendment) Act. More than that, Sir. Ever since the enactment of the Code of 1882 every Sessions trial is held in co-operation with 2, 3 or 5 or more assessors and the assessors then give a verdict as to whether a man had committed a particular offence or not. That has been done away with in this special procedure. I therefore say that this right of appeal is a negation of every ordinary rule and method of procedure. That being the case, as my friend Sir Abdur Rahim has pointed out, it being an anomalous trial, what is the good of your giving a right of appeal? What is the High Court Judge to say and what is he going to say? All he can say is, "Some evidence is given against you behind your back which is relevant under the Act; it has condemned you; we have no right of going behind it; and therefore you must either go to the gallows or be transported for life". That I call a negation of the right of appeal, and it is against that that Members on this side of the House protest.

It is true, Sir, that our protest is in vain because the Punjab Act is not before us. and the right of appeal which the present Bill seeks to give is, as I have pointed out, ineffective and illusory. All that we therefore can do is to appeal to the Treasury Benches not to follow this anomalous procedure, but to bring before us a consolidating measure, and then we shall be in a position to see and judge of it as a whole and to give you our support, subject to such amendments as the House may adopt. That, I submit, is a right course; that, I submit, is a constitutional course. Any other course, we submit, is unconstitutional. What my friend Mr. Jagannath Aggarwal was complaining of, Sir, was this. He said that the rights and privileges of this House, of which you, Sir, are the custodian, have been seriously violated in the Punjab Council, where the Members were assured that the right of appeal, if not given by the Legislative Assembly, would be certified by the Governor General in Council. That you have got the power of certification nobody denies, but it is not conducive to a better feeling between you and us if you keep dangling that power of certification before our eyes every day. After all, human nature is sentimental to a certain extent, and when you reminded the Punjab Council and said, "Oh! don't care about the Assembly; if the Assembly refuses that right of appeal, the Viceroy has the power of certification . . . . .

**Dewan Bahadur T. Rangachariar:** Will my Honourable friend point out the exact words?

**Sir Hari Singh Gour:** That, I submit, is an attitude of mind which is not conducive to a better feeling between the occupants of the Treasury Benches and ourselves.

Some Honourable Members want me to read out the exact portion. I will give them the exact words from the Punjab Legislative Council debates, dated the 27th October 1930, pages 30 and 31. Now, I will give

the exact words. (*An Honourable Member*: "Whose?") I will give the exact words of the Honourable the Home Member:

*"The Honourable Captain Sardar Sikandar Hyat Khan*: Sir, I do not quite follow the honourable member's point. Sir Henry Craik was talking about the supplementary Bill to give the accused right of appeal to the High Court.

*The Honourable Sir Henry Craik*: We have a definite promise from the Government of India."

(*Honourable Members*: "Hear, hear.")

That is not all.

*"Shaikh Muhammad Sadiq*: They have in writing a promise, which cannot be seen by me or by any Member of this House, that the Bill will be introduced in the Legislative Assembly, and that that Bill will be passed by the Assembly. . . . "

I leave out the rest of it. Then:

*"The Honourable Sir Henry Craik*: There is another device."

(Laughter.)

I make a present of those words to the Honourable the Home Member and the Honourable the Law Member.

"There is another device if the Bill is not passed.

*Shaikh Muhammad Sadiq*: The Viceroy may permit the Home Member to move the Bill in the Assembly. The Bill may be rejected. If it goes to a Select Committee, it may be changed out of shape.

*The Honourable Sir Henry Craik*: It may be certified."

**Mr. Arthur Moore**: That is what Mr. Puri suggested.

**Sir Hari Singh Gour**: That is the position which Members of the Opposition resent. We perfectly know that you have got the constitutional power of certification. But do not come to us every day and say, "Gentlemen, pass this Bill. If you don't, we are none the worse for it; we will certify it". That is the position you have taken up in the Punjab Legislative Council. We therefore ask you to reconsider your position, and if you really want to have the co-operation of this side of the House, I warn you that you must give us at least credit for common sense and come to us with a measure which, if it is a right measure, we will pass, but if it is not a right measure, you know very well as well as we do that we shall not pass. I therefore submit that my Honourable friends from the Punjab, after the emphatic protest which they have registered, would not oppose the passing of this Bill. Half a loaf is better than no bread, and it is in that sense that we will not oppose the further progress of this Bill.

**Nawab Major Malik Talib Mehdi Khan** (North Punjab: Muhammadan): My Honourable friend, Maulvi Muhammad Yakub, if I understood him correctly, said that the Punjab has been a source of trouble. May I remind him at the outset that the Punjab has never been a source of trouble, and that it has been the Punjab and the Punjab alone that has fought the battles of India on the far off frontier, in Afghanistan, Tibet, Africa, and last of all, in Germany.

**Maulvi Muhammad Yakub**: And also passed this Act.

**Nawab Major Malik Talib Mehdi Khan:** I say that, but for the Punjab, we could not have been so secure as we are to-day, and I would request this Honourable House to bear in mind those who have served the cause of India so well. I am rather disappointed to hear the debate to-day. We are talking of the federal system, provincial autonomy, etc. Is this a foretaste of them, that we are being provided with today? In the Punjab an Act has been passed and it is in operation, and here we are told that whatever has been done is not lawful. (*An Honourable Member:* "Lawful? Constitutional.") Does it require any argument that emergency measures are needed for the situation that has been created? All we have to see is whether the measure before us will serve the purpose that we have in view. It has been pointed out that the Punjab law is defective. Well, it may or may not be, I do not think it is; but I say that the Bill before us to-day is a useful measure and it is devised to lessen any rigour that exists in the original Act, and as such, we should all heartily support it.

**Mr. K. Ahmed** (Rajshahi Division: Muhammadan Rural): Witnessing as I do the fight, the internecine warfare, that has been carried on in this House from this morning, I cannot help feeling that I must speak a few words regarding the position before the House. In doing so, I submit that it is not my intention to inflict any long speech, but merely to clarify the situation as it has emerged on the Bill to-day. The present Bill, as the Statement of its Objects and Reasons points out, is simply to provide a right of appeal and also for confirmation of sentences of death by the High Court. I have heard the arguments put forward by the non-official Members, but I must say that there is nothing in them to justify me in opposing the passing of this measure to-day, which is like an ointment that can be applied to the bruised bodies of the accused persons. I may not be a member of the Red Crescent Society; I may not be a medical man (*An Honourable Member:* "Is the ointment to be applied after the execution?") My object is to heal the wound. That measure was passed in the Punjab Legislative Council at a time of great emergency, and there is no use crying over spilt milk. My Honourable colleague, Mr. Shaikh Muhammad Sadiq, whom I do not see in his place there, was an M. L. C. (*An Honourable Member:* "That is his brother.") I thought Mr. Sadiq was an M. L. C., but be it he or his brother, whether it be Mr. Aggarwal or Mr. Puri who fought the battles there and lost—to-day at the last moment they come here to oppose the Bill, though they know that it gives some substantial help to people convicted by the Commissioners. Would he, (turning to Mr. Puri) as an advocate, championing the cause of the public or of his client, not welcome such a wholesome provision? (*An Honourable Member:* "Address the Chair.") Does he know that the object of this Bill is to get the power of revision by the Honourable Judges of the High Court, before whom he practises?

**Mr. C. C. Biswas** (Calcutta: Non-Muhammadan Urban): Will the Honourable Member address the Chair?

**Mr. K. Ahmed:** Is there any justification to oppose this Bill on account of a personal grudge? You have lost your strong case on account of bad instructions and you are now opposing this remedial clause which the Home Department of the Government of India have brought forward. Suppose two parties are fighting there in Connaught Place and blood is coming out. Would you not advise the police to take the bruised bodies

to the hospital and apply some ointment? Is it because the provisions of the Criminal Procedure Code were not quite applicable at the trial, my friend Sir Hari Singh Gour feels so much that his book was not used? Sir, this is an emergent measure. When the House is on fire and the buckets of water are in front of you, would you call the fire brigade and wait till they come? As sensible men, you ought to use the buckets of water in front of you to extinguish the fire. Or, would you wait for evidence and inquire into the causes of the fire? We are not saying that in all cases this emergent measure should be applied. In ninety cases out of a hundred you apply the ordinary Procedure Code and you apply your Evidence Act. To-day we find that my friend Sir Abdur Rahim who on behalf of the Bengal Government sent my friend Mr. S. C. Mitra to the Mandalay Jail in 1924 have joined hands. Last year, the year before and a few years ago, we found our friend Sir Hari Singh Gour dancing on the floor of this House when the Bengal Ordinance was being discussed. What was the result of the fighting then? We came to the same conclusion as what is contained in this Bill. I see my friend from Moradabad, for some reason or other, has lost his balance. If it is not favourable to the accused that his sentence of death should be confirmed on revision by the High Court in appeal, how will it be favourable to my Honourable friend to plead his cause?

**Mr. D. K. Lahiri Chaudhury** (Bengal: Landholders): Like yourself?

**Mr. K. Ahmed:** Yes, like myself. It will give me the greatest pleasure to see if my friend, representing the Landholders of Bengal, is not killed under the conditions going on in Bengal at present. It will be a source of great pleasure to me to see that he is unhurt. Sir, being a disinterested person, I think that if a death sentence is passed on a person, the accused person should be given a chance to go to the High Court in revision, and am sure that the House will not make any mistake in passing this piece of legislation. I have the greatest pleasure, Sir, in supporting this Bill.

**Dewan Bahadur T. Rangachariar** (South Arcot *cum* Chingleput: Non-Muhammadian Rural): I do not wish to intervene in the debate on the main motion before the House. I want to ask the Home Member whether the Government of India really allowed the Local Government to give some assurance on behalf of the Government of India as to what would happen in the Legislative Assembly, and whether they informed the Local Government that the power of certification would be resorted to or might be resorted to. It appears to me that the Government of India will resent any such intrusion on their powers by Local Governments. One other question I wish to ask the Leader of the House, is this. Whether, having regard to the fact that this Government was approached by the Punjab Government beforehand as regards the measure, with due respect to this House, they will consider the desirability of placing a consolidated measure before this House instead of placing us on the horns of a dilemma as it were? What is it they say? We have allowed the Local Government to pass a measure up to a certain stage. We want to supplement that by a beneficent provision. Now, they hold a pistol at our head and say, "Pass this measure or the interests of the accused will suffer". Have not the Government of India jurisdiction to pass the whole legislation in this House? Why should not the whole Bill have been placed before us? It is really placing us in a very very awkward position to ask us to consider

[Dewan Bahadur T. Rangachariar.]

this measure. It may be a very beneficent measure, it may be absolutely necessary, nobody can say "No" to this measure, nobody with any conscience can say, "I oppose this motion". In fact I was hesitating to say so today. I cannot oppose it in my own heart of hearts; and I will be doing an injustice to the persons convicted, however wrongly by any tribunal. (Hear, hear.) But we are placed in this unfortunate position; why should not the whole legislation be placed before us, why should not the whole of the supplementary procedure Act be passed by this Legislature? If any amendment is required to that legislation, namely, the Criminal Procedure Code, it ought to be done by this Legislature as long as it has got the power. Why should it be done piece-meal in the Punjab and why should it then come up before us in this manner, placing us thus in an awkward position? I appeal to you, Sir, that some device should be made by you in consultation with the Government of India so that the privileges of this House are not trespassed upon and abused in the manner proposed by the Government of India.

**The Honourable Sir James Crerar:** Sir, though naturally much has been said in the course of this debate which personally I cannot endorse, nevertheless I am gratified to infer that, subject to certain reservations, subject indeed to certain protests, with much of which I am not now concerned to deal, the general tenor of the debate indicates that the House is prepared to accept the provisions of this Bill. Consequently the observations which I have now to make can be restricted to a reasonably narrow compass. In the first instance I must say this. Listening with great attention to the speech of the Honourable Member from the Punjab, Mr. Puri, it appeared to me that he questioned, or did so by implication, if not in very definite terms, the whole justification of the provincial Act. Sir, I propose to observe very closely the ruling which you have given for the guidance of this House in this matter. Consequently I only propose in this connection to reply to points actually raised in the debate. I do not think that there are any Honourable gentlemen in this House who, even with a general cognizance of the course of affairs recently in the Punjab, or if they have taken the trouble to read with any attention the debates in the local Legislative Council, will be disposed for a moment to question or challenge the grave justification with which the Punjab Government introduced into their own Legislative Council a measure of an extremely urgent and important character. I will not go deeply into that question. I will not inflict on the House a recital of the grave and serious outrages, culminating in two very recent occurrences, which I am sure must excite the abhorrence and the condemnation of every single Member of this House whatever his attitude may be towards the precise terms of the Punjab Act. But if I am right in that conclusion, I think I can also reasonably expect that this House will do its part,—that it will not merely express its abhorrence but will do its part in a legislative manner, in co-operation with the Local Government and the local Legislative Council, to carry out what has been found necessary in respect of a very grave state of affairs.

**Sir Hari Singh Gour:** Is not the responsibility ours?

**The Honourable Sir James Crerar:** Now I shall deal—and I hope the Honourable gentleman opposite will excuse me if I did not deal in the first

instance with the point he raised—I shall deal with that point now. The Honourable and learned gentleman and some other Honourable Members complained that, in the course of the proceedings in the Punjab Legislative Council, it had been stated that if this House did not pass this measure, it would be certified. Now I venture to suggest—in fact I very definitely affirm—that if Honourable Members will carefully peruse those proceedings, they will perceive that that is an extremely inaccurate account of what actually did take place. I have two points to make with regard to that. The first is this. Honourable Members in the local Legislative Council, when they were asked to consider this measure, said that they were very deeply concerned on the two points embodied in my Bill, *viz.*, that there should be a right of appeal, and that there should be powers of confirmation by the High Court. I do not think that any Honourable Member here will be prepared to assert that that solicitude on the part of Honourable Members in the Local Legislative Council was not perfectly natural. It ought, indeed, to command the respect and the sympathy of this House, and I wish to say this, that it was a solicitude which it was the duty both of the Local Government and of the Government of India to satisfy in the most complete manner possible. We therefore gave the Government of the Punjab authority to say that the Government of India would take all possible measures to see that this measure was duly enacted; and though I agree that there was a reference made by the Honourable the Home Member of the Punjab Government to the possibility of certification, I invite the attention of the House to the circumstances in which it was made. An extreme, a very extreme hypothesis, was put before the local Legislative Council; and in reply to the very extreme hypothesis, the Home Member of the Punjab Government explained that there was a possibility, if the facts assumed in that extreme hypothesis did arise, there might conceivably be methods, by which that hypothesis could conceivably be met. I maintain that there was no disparagement of the authority of this House (Hear, hear); and I say that the Punjab Government, in urgently placing before us their request and we ourselves in complying with their urgent request, have shown the same degree of solicitude and our respect of the authority of this House by bringing forward this measure at the earliest possible moment.

Now the third point which I have to make—and I shall make it very briefly—is this. I was somewhat surprised to hear it urged upon me by two Honourable and learned gentlemen—Sir Hari Singh Gour and Dewan Bahadur Rangachariar—that the proper constitutional course of the Government of India was to introduce a consolidated measure. Now what does that mean? Do the two Honourable gentlemen opposite intend to convey that now is the proper time for the Government of India to pass a measure of general application introducing special methods of procedure when to one of even limited application they have taken a very strong objection? If so, I confess I myself cannot see how . . .

**Dewan Bahadur T. Rangachariar:** That is not what I meant. What I meant was that such a measure should apply to the Punjab alone.

**The Honourable Sir James Crerar:** Precisely. That may not be what the Honourable and learned gentleman meant, but what I venture to point out is that that would be the logical consequence of this suggestion.

**Sir Hari Singh Gour:** No.

**The Honourable Sir James Crerar:** Or in the alternative this, that if it were contemplated that these provisions were to be of purely local application, then we would be invited to deprive the local Legislative Council of their legitimate and statutory jurisdiction in the matter. (Hear, hear.) I say in either alternative that suggestion was not a suggestion which we could accept. Well I will put it in this way: I respect the legal and constitutional learning of the two Honourable gentlemen, but when they made that suggestion, I do not think that they spoke precisely in that capacity.

Then, I will take up only one or two points which were urged with some vigour by Sir Hari Singh Gour. He said in the first instance that he objected to this appeal, because the appeal would not be effective. I must traverse that very strongly. I deny that the special procedure set up under this Act would produce a record which must compel a High Court to reject every appeal coming before it. Sir, I have a very much greater respect for the authority of Benches of the High Court than to suppose that they would take that course. But, I maintain that we have justification in the light of the experience of a very similar measure in another province for rejecting altogether the suggestion that a High Court hearing a case on appeal will not have ample material for them to exercise to the full their judicial discretion in the matter. Sir Hari Singh Gour also complained that the tribunals were appointed by the executive power. It appeared to him improper that the judicial authority should be appointed by executive power. I confess I see nothing repugnant to constitutional considerations on that point because the Honourable and learned Member will I think agree with me that every judicial authority is, in the long run, appointed by or under the authority of the Crown and that is precisely what is provided in the Punjab Act. He said there was a certain rule of evidence in the Punjab Act which put the defence at a very improper disadvantage in regard to the admission of evidence, and he quoted section 10 of the Act. Now, Sir, may I remind the House exactly what that provision is:

"Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act, if such person is dead or cannot be found or is incapable of giving evidence and it is proved to the satisfaction of the Commissioners that such death, disappearance or incapacity has been caused in the interests of the accused."

I think, Sir, that that proviso is a very important proviso, a proviso which in the circumstances of the kind of cases, which are the only kind of cases covered by the Act, is an essential proviso for the due administration of justice.

Then, Sir, Sir Hari Singh Gour also contended that the Punjab Act deprived accused persons in the Punjab of an inalienable right which they already enjoy, that is the right of trial by jury. I do not think my Honourable and learned friend has very carefully investigated that point.

**Sir Hari Singh Gour:** Jury or assessors, I said.

**The Honourable Sir James Crerar:** The main point that the Honourable Member made was that the Punjab Act deprived accused persons in the Punjab of an inalienable right of trial by jury. I may inform the House that the Act does not do any such thing because under the provisions of the Criminal Procedure Code that right of trial by jury does not at present subsist in the Punjab.

**Mr. B. R. Puri:** Question.

**The Honourable Sir James Crerar:** Now, Sir, I do not wish to deal with any points in greater detail. I refer, of course, to trials in the Courts of Session.

**Mr. B. R. Puri:** If the Honourable Member would refer to section 268 of the Code, and Chapter XXXIII relating to cases of a racial nature, he would find all trials in the Courts of Session must be either with the aid of assessors or jury, as the case may be, whether in the Punjab or elsewhere.

**Sir Hari Singh Gour:** I referred to that provision.

**The Honourable Sir James Crerar:** The Local Government have certain powers. Where the Local Government have exercised discretion in the matter, they set up . . . .

**Mr. B. R. Puri:** When it is a warrant case, no trial by jury or assessors can take place.

**The Honourable Sir James Crerar:** I do not however propose to weary the House, or indeed to over-elaborate a case which I think has already been completely substantiated by traversing any points in greater detail. I quite sympathise with the feeling of certain Honourable Members of the House that they are asked to deal with a limited measure which supplements a measure not passed in this House, but I think that there has been every justification for that course. I contend that those, who hold that the jurisdiction of this House has been in any way impaired or infringed because cognisance has been taken only of a limited jurisdiction of the local Legislative Council as regards this measure, are really asserting a doctrine whose implications upon the course of political development in this country would be of a very retrograde character if they are closely scrutinised and examined. With these observations I commend the Bill for the favourable consideration of the House.

**Mr. Amar Nath Dutt** (Burdwan Division: Non-Muhammadan Rural): Sir, although two very eminent Members of the Calcutta Bar have spoken about this Supplementary Bill, still I may be permitted to refer to certain points about which the House may be under some misapprehension. The two Members of the Calcutta Bar have addressed so far. . . .

**Maulvi Muhammad Yakub:** We do not know who they are.

**Mr. Amar Nath Dutt:** I refer to the reasoned and eloquent speech which was delivered by Mr. K. Ahmed in support of the Government measure and certainly, I do not mean the ex-Advocate General of Bengal, for he can hardly rival the member from Rajshahi in this respect. But I take exception to some statement of the Honourable the Law Member. He said that because the Bengal Criminal Law Amendment Act was passed in 1925, a similar Bill was introduced here and we had no objection to pass that measure. I am sorry, Sir, that my Honourable friend makes a statement which is not correct. It was not passed by the Bengal Legislative Council; but was rejected by the Bengal Legislative Council as some Honourable Members here who were then in the Bengal Legislative Council will bear me out. It was afterwards certified by the Governor of Bengal. Then, again the Bill which was brought forward here to supplement the same was rejected by a majority.

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The votes on that supplemental Bill were 39 against 73. So, Sir, the appeal which the Honourable the Law Member has made to us that there is a precedent which we ought to follow is not based on actual facts. Again during the passage of the recent Bengal Criminal Law Amendment Act, to which reference has also been made here, several Members walked out in protest when that Bill was before the Bengal Legislative Council. They recorded their protest by a simple walk out and they did not take part in the deliberations. These are the facts which I wish to place before Honourable Members so that they may accept the statement of the Honourable the Law Member with regard to the point about the Bengal Criminal Law Amendment Act for what it is worth. Coming from Bengal, I think it my duty to point this out.

**Mian Muhammad Shah Nawaz** (West Central Punjab: Muhammadan): Sir, I desire to make a few observations regarding this Bill. I support the motion for consideration of this Bill for two reasons, firstly because the Punjab Act is the law of the land of five rivers and the Supplementary Bill gives the right of appeal to a convict, and secondly because, I must accord my assent to it in the interest of justice. But that does not mean that I approve of the provisions of the Punjab Act, because I tell you, Sir, that I do not. In my humble judgment the Punjab Act was hurried through and the assent of the Governor General in Council was also given hurriedly. This House should have been given an opportunity to express opinion on the merits and demerits of the Punjab Act before it had come before the Governor General in Council for assent. In fact the Punjab Act had received assent before the meeting of the New Assembly. May I request the Honourable the Home Member and the Honourable the Law Member to reconsider the matter in the light of the suggestions I have to make? Is it not possible for them still to advise the Punjab Government to get the Punjab Act amended in some respects by the Punjab Council? And I will tell you, Sir, in what respects it should be modified. The

1 P.M. Punjab Act does not give sufficient time to an accused person to defend himself. He should be given at least a fortnight to prepare his defence before his trial begins before the Special Tribunal. And further a fortnight at least should be given to him after the framing of the charge to enable him to make his defence. The Punjab Act is defective in this respect. An accused person should be given sufficient time to enable him to meet the charge. The debate in this House has served a very useful purpose. I have made this suggestion in the hope that the Government of India may make it to the Punjab Government.

Sir, I have another suggestion to make. I believe the rules allow a non-official Member of this House to place a private Bill before this Assembly for consideration with the previous sanction of the Governor General in Council and thus an Act of the Local Council can be modified by this House. Is it not possible for the Government to allow a non-official Member of this House to introduce a private Bill in this House to make the necessary changes or modifications in the Punjab Act? The Punjab Act has done away with the commitment proceedings and it is only but just that an accused should be given ample time to give instructions to his Counsel to cross-examine the witnesses for the prosecution and adduce evidence for the defence. The time given by the Punjab Act is utterly

inadequate and hence you cannot say there will be a proper trial in cases that will be tried by the Special Tribunal.

**Mr. S. C. Shahani** (Sind: Non-Muhammadan Rural): Sir, I have found it difficult to understand the procedure that has been adopted for introducing this Bill in this House. If the Punjab Amendment Act was passed by the Punjab Legislative Council, it is only reasonable that this supplementary measure should have been brought before that Council. The original Act is objectionable from every point of view. It denies some fundamental rights and liberties to the people, such repressive measures are calculated to estrange the people from the Government. On this account a consolidating measure should have been brought before this House; and as that has not been done, it will be only right on the part of the Members of this House to reject the Supplementary Bill.

**\*Mr. N. N. Anklesaria** (Bombay Northern Division: Non-Muhammadan Rural): Sir, I would take the liberty of pointing out to the House that some of the speeches made here may prove misleading, especially the very able speech of my Honourable friend, Sir Hari Singh Gour. If you look at the Bill, Sir, you will find that it inserts by necessary implication all the salutary provisions of chapters 25 and 31 of the Criminal Procedure Code. Therefore the Bill provides that the High Court is not only not restricted to deciding cases offhand, but it has got the power to call for the record of the whole case and also to call for any evidence which it thinks necessary. It gives a decision not only on the law involved but also on facts. I therefore submit, Sir, that so far as the Bill goes, it embodies very salutary provisions in favour of accused persons, and the sole question therefore would be whether the Bill as it stands improves the position of an accused person or in any way worsens it. If the House is satisfied that it is an advance on the Punjab Act in favour of the accused, then I submit there can be one and one conclusion only, namely, that the House should support the Bill.

**An Honourable Member:** Apply to Bombay.

**Mr. N. N. Anklesaria:** We will apply to Bombay if it is necessary. I submit, Sir, that most of the discussion which has taken place may appear irrelevant to the issue in hand, but if that discussion serves to show to the country that we are in entire disagreement with the principle of the Punjab Act, I submit that discussion will not have been wasted. With these words, I will resume my seat.

**\*Mr. S. G. Jog** (Berar Representative): Sir, I am honestly going to be very brief, and I am not going to inflict any speech upon the House. The Bill, Sir, as I read it, is very defective. This Bill, as I understand it, is not to supplement the Punjab Act, but to complement it. It is a Bill to complement the mischievous law which has been passed by the Punjab Legislature; and with due deference to the House, this point does not appear to have been touched by any of the Honourable Members. The Act which has been passed by the Punjab Legislative Council shall not be brought into operation so long as this complementary law has not been passed by this House. (*Several Honourable Members:* "No, no".) My view of the case is that we are not discussing this measure merely for the sake of fashion, or merely for the sake of putting in a protest against the Act that has been passed

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\*Speech not revised by the Honourable Member.

[Mr. S. G. Jog.]

by the Punjab Council. I appeal to the House to vote against the concessions that are offered in this Bill. If we succeed in defeating this Bill, the legal position to my mind is that the Punjab Criminal Law Amendment Act automatically falls through. That is a position which I think the House should take into account.

**Several Honourable Members:** No, no.

**Sir Hari Singh Gour:** There will be conviction without an appeal.

**Mr. S. G. Jog:** If I am not correct in my view, I beg to resume my seat.

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

"That the Bill to supplement the Criminal Procedure (Punjab Amendment) Act, 1930, be taken into consideration."

The motion was adopted.

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

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

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**Mr. President:** I now put the Bill clause by clause.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir James Crerar:** Sir, I now move that the Bill be passed.

The motion was adopted.

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## THE BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL.

**The Honourable Sir James Crerar** (Home Member): Sir, I move that the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, be taken into consideration. In submitting this motion to the House, I propose very briefly and summarily to recall to the recollection of Honourable Members a brief history of the Bill and of the circumstances which have led the Government of India to lay this piece of legislation before the House. Honourable Members are aware that towards the end of the year 1924 the recrudescence which had dated from a considerable period before, of terrorist crime in Bengal had necessitated in the first instance, owing to the rapid increase of crimes of violence of that character in that year, the promulgation by the Governor General of an Ordinance for dealing with it. That Ordinance was made during the Viceroyalty of Lord Reading and the powers which were taken under the Ordinance were replaced by an Act of the local Legislature supplemented by a Supplementary Act of this Legislature in 1925. In the first two years during

which that Act was in operation, action taken under the Act had, I am glad to record, a very marked effect upon the incidence of crime of that character. In fact, during the concluding half of the period for which that Act was in force, we were able, with very much satisfaction, to record an almost complete cessation of crime of that character, and for the greater part of that time the Local Government were able to dispense with any fresh recourse to the detentive provisions of the Act.

In the beginning of last year, that Act was shortly about to come to the end of its statutory period of five years, and it became a matter for the very grave and anxious consideration of the Local Government and the Government of India what steps should be taken with that prospect immediately in view. Both the Government of Bengal and the Government of India were extremely anxious to dispense, as far as was practicable, with the exceptional powers to which Government, either the Local Government or the Central Government, have only had recourse with the greatest reluctance and under pressure of the greatest necessity. It was thereupon decided that the Government of Bengal should undertake in the local Legislative Council the re-enactment of only that part of the Bill which dealt with special tribunals. The remaining provisions of the Bill relating to preventive detention were then repealed.

In order to put the House fully in possession of the situation, I cannot do better than read a portion of the statement which was made at the time by His Excellency the Governor of Bengal. He said :

"After anxious thought my Government have decided not to propose, on the facts at present before them, the continuance of that part of the Bengal Criminal Law Amendment Act which grants the executive the power of arrest and detention without trial. These powers have unfortunately been found essential in the past, but for the last three years it has been possible to keep the situation under control without fresh recourse to it. My Government desire to do everything that they can to seek in co-operation with Indian opinion the solution of our present difficulties, and are therefore reluctant to invite the Legislature to continue in existence powers, the occasion for the exercise of which we most of all deplore. We sincerely trust that no emergency will necessitate their re-enactment. They cannot conceal from themselves the possibility that such an emergency might again arise which may make it essential for them to be in possession of these powers. They have accordingly been in communication with the Government of India in this matter, and I am authorised to state that the Governor General in Council and His Majesty's Government, if they are satisfied of the existence of such an emergency, will be prepared to approve of the necessary steps being taken to secure such powers to the Government . . . ."

**Mr. Abdul Matin Chaudhury** (Assam : Muhammadan): On a point of order, Sir. Is the Honourable the Home Member in order in arguing the necessity for the Criminal Law Amendment Act? Is that Act before the House now?

**Mr. President:** The Honourable the Mover is trying to explain why it is necessary to bring this Bill before the House and he is quite in order.

**The Honourable Sir James Crerar:** Thank you, Sir. I intend at this stage of my arguments to restrict myself to a recital of the facts in case any Honourable Member might be under an initial misapprehension as to what the facts of the case are. Well, Sir, the Act to which I have just referred was re-enacted with the provisions relating to the special tribunals on the 5th April, 1930. Hardly a fortnight had elapsed when the country was shocked and horrified by the armed rising at Chittazong, which resulted in the death of no less than twelve persons and serious injuries to many

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others and many violent acts of arson and incendiarism. In view of that situation the Governor General found it necessary to promulgate an Ordinance reviving the powers relating to preventive detention, and a Bill with the same content was in due course submitted to the local Legislative Council and was passed by a very large majority, I think, in the beginning of November of last year.

Now, in order to bring those facts into precise relation with the Bill which I have laid before the House, I must explain that the original Act of 1925 contained provisions of a similar character to those which I dealt with in another context this morning for the right of appeal to the High Court and for confirmation of death sentences. Those provisions still survive, because the Supplementary Act of 1925, which embodied those provisions, is, in so far as those provisions are concerned, still in operation. For that reason no provision of that nature appears in the Bill before the House. The two points involved in the Bill now before the House are, as Honourable Members will observe, in themselves really narrow points. The first confers on the Local Government the right, subject to the sanction of the Governor General in Council, to transfer to some other province in British India, any person or persons who may be detained in accordance with the provisions of the Act. The second relates to certain powers of the nature of *habeas corpus*.

Now, I shall deal with those two points separately. Dealing first with regard to the powers to transfer detenus, I hope the House will allow me to speak to them with the utmost frankness and candour. Government have nothing to conceal from themselves in the matter, and I think that the clearer and the more precise view I can give to the House, the better will it be for a clear understanding of the position. It must be obvious that when circumstances unfortunately have arisen which render it necessary for Government to enact powers of preventive detention, we are faced with a very serious state of affairs. It is this, that we have to keep in detention, with due regard to all the circumstances, but nevertheless in detention, a considerable number of persons all of whom are engaged in extremely dangerous activities, and some of whom are individually men of an exceptionally dangerous character. Now, the detention of persons whose unhappy view of affairs has led them to embark on action so dangerous to the State and to the society manifestly confronts the local administration with a serious problem. It has been known, I regret to say, and there have been very strong reasons to suppose, that terrorist activities, terrorist conspiracies have in point of fact had some contact within the jails. It is a condition of affairs which, however, deplorable, we must face. It may be, and I am afraid in some cases it probably has been the case, that many of these prisoners have been in a position to exercise influence on subordinate officers of the jail. Such a contingency must always be a reasonable apprehension, and I have very strong reasons for supposing that it has occurred. Now, another consideration is this. Among the persons who have to be detained under these provisions, there are some whom I might call inveterate terrorists. There are others, younger men who are not so deeply involved in these lamentable activities whom, as far as possible, we should like to isolate and protect from the demoralising influence of persons of the other kind. Now, a provision of this kind which enables in certain circumstances a transfer of detenus from jails in Bengal to jails outside

the province meets those, to some extent at any rate, practical necessities of the case. Now, I ask the House to recognise that those necessities are practical necessities, and it is our duty, if we can, to assist the Government of Bengal in their difficult and dangerous task of dealing with a difficult and dangerous situation. Such cases are not likely to be common, and I should like to emphasise the fact that in no case can transfers of that kind be carried out without the express sanction of the Governor General in Council, who would of course see that full and satisfactory grounds were made out before such action was taken in every case which came before them.

Now, Sir, I pass on to the second important provision of the Bill, which relates to the powers of *habeas corpus*. With regard to both these provisions, that with which I have already dealt, namely, powers of transfer, and that with which I now propose to deal shortly and summarily, I should like to emphasise at this stage that there are not any new points of principle. They have been laid before this House and there have been fully debated and therefore I am not bringing forward at this stage any novel principle, any principle which has not been very fully canvassed and examined. Dealing with the powers of *habeas corpus*, I cannot do better than recapitulate the very frank and candid statement of the case which was made by my lamented predecessor in office, the late Sir Alexander Muddiman, when provisions of this identical character were in 1925 submitted to this Assembly. This is what he said:

"I do not minimise the fact that this is a very grave step to take, but it is a step that really is essential to executive preventive procedure set up by this legislation. The necessity of such a bar where legislation confers a power of internment has been recognised by this Legislature, not in 1818 but very much later. Section 491 (3) of the Criminal Procedure Code bars for exactly the same reason as this Bill application to the High Court. And why does it do it? . . . The point I am putting to the House is this. This has been represented as some new, dreadful invasion on the rights of the subject. Sir, if that is so, this House and the other House have been parties to a similar invasion for a large number of years. The Legislature apparently, at that time recognised, and rightly recognised, that there are essential provisions in connection with any executive power of detention.

If you admit that in special circumstances the Executive must have power to detain without trial, then you must admit, it is the logical conclusion of your admission, it cannot be avoided, that you must also bar the jurisdiction of the High Court to interfere by way of *habeas corpus*. There is no question of suspicion of the court. That is not the point at all. I will take section 13 of the Bengal Criminal Law Amendment Act as an example and develop what I am endeavouring to explain. Section 13 runs as follows:

'Any officer of Government authorised in this behalf by general or special order of the Local Government, may arrest without warrant any person against whom a reasonable suspicion exists, etc.'

An arrest is made under the section. I go straight off to the High Court and I engage my friend opposite and he instructs learned counsel on my behalf, and the Court is bound to issue a rule on the officer who arrested me to show that he acted on reasonable suspicion. Very good, what is the position of Government in regard to that? Government may justify or it may not justify. If it justifies, it must produce evidence which *ex hypothesi* is evidence which it cannot produce. It is evidence of a secret and State character which cannot be produced in court, because if it could be produced in court the man would be tried. Government are in this dilemma then, they must either give away their secret sources of information, which will destroy the whole system on which our power to control secret movements is based, or they must submit to the discharge of the person arrested. In other words, this Act becomes unworkable. . . . That shows why it is essential, if you set up this system, that you must bar the jurisdiction of the High Court. There is nothing else left to you. Otherwise you may just as well not have the procedure at all."

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Again, somewhat more concisely he added :

"If I have to justify the detention in the High Court, I have to reveal my sources of information. My case is that I cannot reveal the evidence. That is my whole case. If the evidence can be brought before the Court, we should bring it forward and put the man on trial. If I do not justify, then the accused person arrested must be discharged by the court. Let me impress upon my Honourable friend that there is no question of distrusting the court. The court is bound to make me produce the evidence which I cannot produce and which the very course I am taking shows that I cannot produce. *Ex hypothesi* I cannot produce that. You absolutely destroy the whole of the second part of the Bill if you take a different view. That is the whole of my point. You cannot have co-existing a power of revision of the grounds of your action by a judicial tribunal. That is the short answer and that is the only answer."

Now, Sir, I have read those passages at some length because I feel that they give a clear, candid and honest statement of the case which I cannot better. I will only say that the public grounds of necessity which operated at the time that Sir Alexander Muddiman addressed this House in these terms operate with still more gravity at the present time. I should like to point out further to the House that the power which this Bill seeks to confer is really of a very limited character; in practice, I think I may say that it will only apply in the case of detention under section 4 of the Act. As Honourable Members will observe, that provides for detention in the first instance for a period of fifteen days; it may be extended by the Local Government to a maximum of thirty days. So that, in my view of the case, the degree of interference with the liberty of the subject which is involved is by no means so extensive as has been so frequently supposed. I am not in the least disposed to argue that there is not any interference with the liberty of the subject, but in the circumstances of the case it is inevitable that that should be so. If the grave circumstances, which compelled the Local Government, with the sanction of the Governor General, to introduce this legislation, hold good,—and I do not think it is likely to be seriously challenged in this House or elsewhere that they do hold good—then this interference with the normal law regarding the liberty of the subject is, after all, much more restricted than has generally been supposed, and it is restricted for purposes which are of the greatest and the most immediate importance. I observe in some of the questions of which notice has been given, I have been asked why the responsible police authorities did not prevent the commission of certain serious outrages which are referred to in the questions. I agree that what lies behind a question of that nature is that prevention is a very much better thing than punishment. But how are you going to prevent? You can only prevent by being forewarned, and you can only be forewarned by having sources of information, by following up clues, and by keeping under surveillance the actions of persons whom you have reason to believe are involved in dangerous activities of this kind. It is at that stage that the possibility arises of taking preventive measures as distinct from punitive measures, and it is in order that the responsible authorities may have adequate opportunity at that critical time which coincides with the formation and precedes the commission of offences of that kind, that the practical necessity of a measure of this kind really arises.

Now, Sir, I have spoken, I fear, at some considerable length. I have deliberately refrained from dealing with the details of outrages some of

which are of recent occurrence and have shocked the whole country. I have not referred to them because I think the House is in full possession of the facts, but I cannot entirely omit reference to them because I would not have it supposed that I do not regard that as a matter of the very greatest gravity and importance, as a condition precedent to the measures which I have had to lay before the House, but it is one which I do not think necessary to dilate upon before a House which I am sure is fully aware of the facts and will be willing to unite with Government not only in deploring them but in giving effect to their sense of condemnation by their co-operation in the measures necessary to deal with these and similar offences. (Applause.)

**Mr. Abdul Matin Chaudhury:** Sir, I move that the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, be circulated for the purpose of eliciting opinions thereon by the 30th March, 1931.

Sir, my Honourable friend, Mr. Satyendra Chandra Mitra, who is more competent than myself to speak on this subject, had originally given notice of a similar motion, but as he is indisposed, he is prevented from making a speech under medical advice, and the duty has fallen upon me of moving this motion.

Sir, I have not been able to understand all this haste and hurry with which the Government are trying to rush this Bill. This Bill was introduced in this House on the 15th January, and four days after—to-day is only 19th—we are being asked to consider and pass it. Government want us to skip over all the usual intermediate stages, circulation of the Bill, reference to Select Committee, etc. and give our sanction to the Bill immediately here and now. Now, Sir, the question arises, what is the urgency and emergency of this measure? The position is really this. The detenus are already inside the jail. Their movements have been restricted; their liberty has been curtailed; and their capacity for mischief, whatever that may be, has been curbed. For all practical purposes, they are entombed inside the prison walls. Where, then, is the need, the justification for rushing this Bill through without giving the House and the public outside an opportunity of discussing this Bill in all its varied aspects? This Bill is not so innocent as it looks. It has got

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graver implications. Till now the detenus were detained in their own province. Now they are going to be exiled. The Detention is going to be supplemented by Deportation. That is the most sinister implication of this Bill. It is hardly necessary for me to emphasize the horrible consequences of this measure. The detenus will be deported to distant places like Mandalay and Coimbatore. They will be detained in unfamiliar surroundings, far away from their friends and relatives and it will be impossible for their friends and relatives to interview them. They will be deprived of the little consolation, little joy and little cheer that interviews with their friends and relatives bring in their dreary life. As it is, the life of a detenu is more unbearable than the life of an ordinary convict. The ordinary convict knows when he is going to be released and he patiently and confidently waits for the day of his release. There is no such solace for the detenu. His period of detention is uncertain and the physical and psychological effect of this uncertainty on the mind and constitution of the detenu is most debilitating. Instances are not rare of young men of rigorous constitution who went to jail as detenus and came back as physical wrecks. Honourable Members are aware of the case of Mr. Subhas Chandra Bose, who went to internment, a picture

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of health, and came back a consumptive. My friend over there, Mr. S. C. Mitra, went to Mandalay jail on internment and came back more dead than alive. If as a result of this deportation one young man is hastened to a premature grave, the moral responsibility will be on the shoulders of those gentlemen who help in passing this measure.

Now, Sir, who are the people who are going to be interned and deported? They have not been convicted of any crime. Their guilt has not been proved, in any court of justice. There is not evidence enough to bring them under the security section even. They are only suspected of being connected with the terrorist movement. If for reasons of State you are going to detain them, why deport them also? Are not the jails in Bengal as safe and secure as the jails in other provinces? Is there not enough accommodation in the Bengal jails for these 300 people? In the last Session of the Bengal Legislative Council, 15 lakhs were granted for the accommodation of political prisoners, and surely you can accommodate these 300 detenus there? My own impression is that the Government of India want to crush the spirit of these innocent suspects. They want to make their lot harder, more rigorous than the lot of the Russian revolutionaries who used to be exiled in Siberia. I was reading only recently the autobiography of Trotsky. When Trotsky was exiled in Siberia, he was allowed to live with his wife, could entertain friends and go out boar hunting for recreation. Do the Government of India, while they transfer these men to other provinces, intend to allow them to live with their families and give facilities for recreation outside the jail and allow them to meet and entertain friends? If the answer is in the negative, then the Government of India are open to the charge that their treatment of political prisoners is less humane than that of Russia. I do not want to labour this point. I want to bring one point forward for the serious consideration of the Government of India. Is this the opportune time for bringing in a measure of this kind? His Excellency the Viceroy referred to the dawn of a new era in the constitutional history of India. The air is thick with rumours of political amnesty. Is this the time to bring in a measure which I can best describe as an instrument of torture for the Bengal detenus? Why not circulate the Bill and await developments? I have no illusion with regard to the attitude of the Government. I know when statesmanship dictates a particular course the Government of India will do the contrary. I will appeal to all the elected Members, both Europeans and Indians, on humane considerations to oppose this Bill and support my motion.

**Mr. Amar Nath Dutt** (Burdwan Division: Non-Muhammadan Rural): Sir, I rise to oppose this apparently inoffensive Bill. There are two operative sections to the Bill. One is to give power to the Local Government to have detenus transferred to some other provinces in British India. The other is to suspend the *habeas corpus*. Sir, I have carefully read the Statement of Objects and Reasons. I read it over again and I have not been able to find a single line of reference to the reasons which necessitated such a provision as a supplement to the Bengal Criminal Law Amendment Act of 1930. It is simply mentioned in paragraph 3 that the Bill empowers the Local Government, with the previous sanction of the Governor General in Council, to make an order committing to custody

in a jail outside Bengal any person against whom an order under sub-section (1) of section 2 of the local Act might be made. Failing to find any real statement of the objects and reasons for this apparently in-offensive Bill, I closely listened to the 25 minutes speech of the Honourable the Home Member, and I am surprised that he would not give any reasons for removal of prisoners from one province to another and uttered vague platitudes, such as protecting detenus from demoralising effects, practical necessities and so forth. No definite reasons were assigned for transferring the political prisoners from one province to another. Probably the Government thought that it would be wise to cover the real issue underneath a propaganda against the so-called terrorist movement in Bengal. There has been a confusion of ideas and I think it is no compliment to the intelligence of any one of us, if the Honourable the Home Member thinks that we cannot see through the device and that they want to conceal the real issues behind and want to prejudice the minds of Honourable Members by repeating all that has happened at Chittagong and other places and reciting all those things in connection with the alleged terrorist movement. Sir, the Honourable the Home Member was reading the speeches of the Governor of Bengal and of his esteemed predecessor, for whom every one of us entertains the highest respect, and who when he was with us certainly commanded the confidence of everyone of us, and whose untimely death every one deplored here, but, Sir, the Honourable the Home Member has not given us anything from his speech to show that he ever attempted to have detenus from Bengal transferred to other provinces. Has he done so? If the Honourable the Home Member thinks that by inflaming our passions, by relating all those things in connection with the alleged terrorist movement, about the happenings in Chittagong and other places, he will make us lose sight of the real issue, he is wrong. What does he want us to do? I think he does not pay a compliment to our intelligence if he takes us to be so many children who will lose sight of the real issues by relation of facts which have no bearing to the matter under consideration. What does he really ask for, and what are the reasons he has adduced for, what he asks? The Honourable the Home Member knows perfectly well that he has not given us any reasons for the transfer of the detenus to other provinces, and probably he has none up till now, save and except the vague platitudes which he has uttered about their being a danger to the State and keeping them free from other influences without giving any specific instance whatsoever.

**Mr. Gaya Prasad Singh:** The jails in Bengal are overcrowded.

**Mr. Amar Nath Dutt:** I think the jails will be overcrowded in other provinces too in no time when my friend over there and many others will be there. (Laughter.) Sir, things are going on in such a way that this will come and this is inevitable. Nobody ever dreamt that a pious Rishi like Pandit Madan Mohan Malaviya would ever court jail. (Hear, hear.) Certainly he was not an extremist politician; certainly he did not belong to the extreme section of political thought. Then, Sir, as I was submitting before the House, the Home Member does not give us any reason for the transfer of these detenus. I shall show to you, however, and clearly prove to you what is the nature of this Bill. As has been already stated by my friend, Mr. Abdul Matin Chaudhury, these are meant for detenus who have not been convicted in any trial, whether by a special tribunal.

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of which my friend over there is so very fond, or by the ordinary tribunal. These people have not been tried; they could not even be brought under any of those sections which have been characterised as an iron hand in a velvet glove, *viz.*, sections 44, 108, and 110 of the Criminal Procedure Code. That being so, they are merely the victims of suspicion, and suspicion derived from what source? Pardon me, Sir, I may be allowed to observe that the source from which you get much of the information is tainted. It requires better and closer scrutiny by more trained legal heads than merely depending upon the village chaukidar, or for the matter of that the police Sub-Inspector. If that be your gospel; if you want to rule India on the report and advice of these police Sub-Inspectors and village chaukidars, whose social position, moral character, education and everything else are certainly not very enviable, well, I think you had better abdicate the self-imposed task of ruling this unhappy land. You ought to have better trained legal heads to scrutinise all the statements that are brought forward, free from the taint of executive officialism, and then and then only you should put them into jail or detain them. Sir, you detain them on mere suspicion, on the report of this class of men. . .

**The Honourable Sir James Crerar:** I may point out, Sir, that in all these cases the evidence is submitted to two judges under the Act: there is no question of detention merely on the report of police officers.

**Mr. Amar Nath Dutt:** Not High Court Judges. I remember five or six years ago we demanded that they should be High Court Judges; and then it was said no High Court Judges were willing to undertake such work, but you will allow me that even in that case the materials available to these Judges are the materials which your police Sub-Inspectors supply. However, we are not concerned with that at the present moment. We are concerned with the supplementary provisions you ask for. I have already submitted that you have not given us the real object either in the Statement of Objects and Reasons or elsewhere.

I shall now point out to you the mischievous nature of the provisions of the Bill. It may appear that if a detenu is transferred from one province to another, no harm is done. He is detained there just as he would have been in Bengal. But, Sir, I submit that these things are done in order to victimise them. Supposing a detenu is transferred from Bengal to the North-West Frontier Province, where the language spoken is Urdu, where the food taken does not suit the people of Bengal, and the extreme climate of which place does not agree with their constitution. These things you will have to consider, and this is by way of punishment for those whom you want to detain, as if only to protect society from their mischievous propaganda, because you suspect that they are probably guilty of such mischievous proclivities. You have no proof, you know that there is no proof of their having been actually concerned in any mischievous activities. However, as long as you think it necessary for reasons of State to detain them, you have the law there, but why seek to transfer them from one province to another? In that case, I have tabled an amendment to clause 2, in which I say that if you want to send a detenu from one province to another, then the place of his detention should be a place of his choice. If you are agreeable, of course, we will have no objection to that. I see the Honourable the Home Member is laughing, but what is a laughing matter to him is death to many. I am

sorry to criticize one of his measures about which he is so keen almost at the end of his career, but I hope he will try to be as sympathetic as his predecessor in office. In that case I think his name will also be remembered with the same affection and respect. **He will please realize this.** It is not a matter of laughter; it is almost a question of life and death to the people of Bengal, the flower of whose youth is mostly detained in jail. Conceding for argument's sake that you are right in detaining them, please do not kill them, do not seek to deprive Bengal of her true and best sons. You and we and they differ about the procedure only, but you cannot deny that they are a set of people with burning patriotism. Unfortunately, the methods are different. We come here and try to do the little we can; they probably think that this method is not right. So I say do not kill them; do not send them to other provinces where their health will be ruined, where they cannot get company, where it will be a sort of solitary confinement for them. The other day I was informed by an esteemed countryman of ours, who was a former Member of this House, that even Mahatma Gandhi's health was failing and that it was time that the Government should see their way to release him. But that is outside the scope of the present Bill. What I beg to submit for the consideration of the Honourable the Home Member is this. I believe that probably he does not realise all these difficulties, and when I lay all these facts before him, I think he will be the first man to realise that there are real difficulties about transferring the detenus, and if subordinate officials choose to be vindictive over some of these, then they can be removed to Burma, to the North-West Frontier Province, and so on, as a sort of punishment, where the food will not agree, because in Bengal they take one kind of food, in Peshawar another and in Burma a different kind of food and so on. The Bengalis are accustomed to eat fish. In some other province, they take meat, while in Burma, I understand, they take raw meat. (Laughter.) As regards association, even the convicts in those Provinces will not be able to talk, and it will be a sort of solitary confinement to these detenus. The convicts in Burma are not expected to know Bengali so as to be able to talk to their fellow prisoners who come from Bengal.

Then, there is another thing which I beg the Honourable the Home Member to take into consideration, *viz.*, the difficulty which lies in the way of interviews with relations. Sir, if you deport a Bengali to Burma or to Peshawar, his relations, who might be inclined to see him at intervals which the Government may be pleased to fix for them they will certainly not be able to have as many interviews, if they are sent to Peshawar or to Burma because from the very nature of the distance, it will be very costly. These are the four points, which I once more urge on the attention of the Honourable the Home Member to consider before inflicting another Ordinance like this—I purposely say an Ordinance—on unhappy Bengal. I know that Bengal has been under the heel of officialdom. Bengal has suffered in the past; it is prepared to suffer in the present and in the future also for the salvation of their Motherland. Bengal also is expiating for the sins which were committed on the fields of Plassey. I hope the Honourable the Home Member will see his way to appreciate the difficulties of enactments like this, and I hope that he will at least accept an amendment like the one which I propose to move

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when he comes to the consideration of the clauses. If it is inconvenient in any way to keep them in Bengal, let them be sent outside Bengal to such places which they themselves choose.

Then, Sir, as regards the suspension of the *habeas corpus*, I submit, this is almost our *Magna Charta* and you attempt to take away that. There is no relief against executive measures for those people who are hauled up under the provisions of this Criminal Law Amendment Act. I submit you need not be afraid of this enquiry by a court of justice. As you see, all this evidence will be placed before two Judges already, and it will be placed before another Judge. Why do you suspend the provisions of *habeas corpus*. But, Sir, I am emphatic and more emphatic about the provision of clause 2, for I have already submitted before you the difficulties, and I hope every one of you will kindly consider all these difficulties and will come to the conclusion that it is not an inoffensive measure as it appears to be on the face of it. With these words, I beg to oppose the consideration of this measure.

**Sir Abdur Rahim** (Calcutta and Suburbs: Muhammadan Urban): Sir, I take it that so far as one part of the Bill is concerned, it is meant to be an administrative and not a penal measure; or at any rate it professes to be like that. So far as that point is concerned, I submit with some confidence to this House that a measure of this sort, that is which confers power to detain a person in custody without trial should not go beyond the bounds of strict necessity. I submit that this is a perfectly reasonable proposition which will also be acceptable to the Government Benches. If that be a sound proposition, then the next question arises, is there any necessity for transferring detenus from their own Province to another. It has been said by the Honourable Member in charge in a somewhat general, and I am afraid, vague language, that if these Bengal detenus are confined in Bengal jails, there is an apprehension of their establishing contact with persons outside the jail and of other complications of an undesirable character arising. I wish the Honourable Member had explained this a little more fully, but apart from that, I do put it to the House that it would not be desirable on the part of one province to shove on its troubles to the shoulders of another province. If the Bengal detenus are inclined to be troublesome, surely it is the duty of the Bengal Government to keep order. There is not one jail only in Bengal; there are a number of them. Is it not possible for the Government of Bengal to make such arrangements that the detenus while they are confined, will not be able to create further trouble inside the jail? Well, Sir, the House will bear in mind that most of them are young men and in many cases, at least they have been misled by the very fervour of their enthusiasm for their country and surely they ought not to be removed from the wholesome influences of their friends and well-wishers. I take it that in many cases, their friends and guardians and well-wishers do not approve of the course which these young men may have pursued or are suspected to have pursued. In that case by removing them to another province, where they will not be so easily accessible to their well-wishers, you are doing them a grave injustice, doing the province a great injustice. I have always set my face against the arrangements in Indian jails, which shut out all wholesome influences from the prisoners; even the consolation of religion is not accorded to them, while in the rest of the world,

they are overhauling their prison system; they are looking very carefully for means and ways by which prisoners, even habitual criminals, should be treated, treated with a view to ultimate reformation. In Indian jails all wholesome influences, all influences tending towards reformation are absolutely shut out. But in these particular cases, do not the Government think that it would be a great misfortune for these young men if they are cut off from access of their friends, friends who might exercise a better influence? If they are taken to another province and thrown among strangers, that is to say, among men who are all hardened criminals, surely the result would be that they would become confirmed in the course they are suspected to have been following. That is a very serious matter and I do hope that the Government of Bengal will very carefully consider whether it is a right measure to remove such men from their province and from places where they are likely to come under at any rate some influence of the right kind.

Then, Sir, there are other difficulties also which have been alluded to by some of the Honourable speakers, and those are the question of climate, the question of food, and all that.

Then, there is another and a worse difficulty in the way of the Government. I was in the Bengal Council, and I know how exaggerated reports come from distant places where these people are detained—most exaggerated reports. When the matter is put before the Council and Members of Government are asked whether in Mandalay or in some other distant place such and such a prisoner is not suffering from very bad health due to ill-treatment or harsh treatment, the public finds it very difficult to find out what is actually going on. Government put themselves in a position of great difficulty in these cases. It is quite possible, quite easy, for the Local Government to make proper arrangements for these detenus, and if so, they ought not to shirk their responsibility. In the next place they ought not to create a situation in which the public mind will always be suspicious. I know how much the Government of Bengal have suffered in that way. I think the Government of Bengal, if they have asked for such powers, ought to be told that they are acting against their own interests and should not insist upon a measure of this sort. And as I have submitted in the beginning, a measure of this sort ought never to go beyond the limits of the strictest necessity, and no such necessity now exists.

**Mr. D. K. Lahiri Chaudhury** (Bengal: Landholders): Sir, this the first occasion in this Session that I open my mouth on such an unpalatable subject, and I feel it my duty to my countrymen, the people of Bengal as well as the landholders and the citizens, that I must record my vote of protest against this unreasonable measure which has been put forward before this House. Sir, the Members, of this House are not generally expected to know all the details of these Bills. Many Members in this House are not lawyers and therefore they can legitimately demand the original Bill to be supplied with the supplementary Bill. That has not been done. That is my first charge against the Government, that when putting forward supplementary or amending Bills, they never care to give us the original Bills.

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Secondly, what are the provisions about the arrest of these detenus? We find that any police officer, not below the rank of a Sub-Inspector, can make an arrest. Formerly, elderly ladies were spared in making a search but now these police men without any warrant can raid the house at dead of night and do not spare the ladies even. Sir, I can boldly say that at the outset that I have no sympathy for the criminals who commit crimes and are liable to receive punishment, but I speak only of the detenus against whom no charge is framed. It has been repeatedly said in this House times without number that this law is nothing but a lawless law, and I can assure the Government that so long as they will continue to follow these repressive measures, they will lose the confidence of those who have got a little stake in the country.

Now, Sir, I am going to put before the House the grievances which may generally occur in the case of detenus, if they are transferred from the province. I shall take them one by one, and if any of these points does not appeal to Honourable Members they need not accept it. But if my grounds are reasonable and my arguments cogent, I hope they will bear with me and vote with me in the same lobby. The first is the inconvenience suffered in the way of communication by the detenus and his relatives. Most of the detenus have got families, and if they are transferred to distant places like Burma and Madras, it will be very inconvenient and difficult for their people to go and see them and inquire how they are doing, after spending so much money in railway and steamer fares. It is difficult for a man to speak out his mind to anybody unless he knows different languages. Of course when a man really commits a crime his penalty is desirable; but it is very hard for a man against whom no charge has been framed if he is sent out to a very distant country where he can get very few friends or relatives to speak out his mind to. It is nothing but a solitary imprisonment. That is one point which impels me to speak on this Bill.

The second point is that, even if his friends or relatives manage to go over there somehow to have an interview with him, they fail very often to get it, because the authorities there say that they have no power to grant the interview but they should go and ask the Local Government for it. Several days pass in correspondence and in the end the interview may be denied.

Thirdly, I must say something about the food which is supplied to these detenus. Generally, the Bengali takes one particular kind of food and if he is put in a distant place like Burma it becomes very difficult for him to take food to which he is not accustomed. And then there is also the manner of cooking it. It is easy to understand how a Bengali gentleman enjoys the dishes in the house of a Japanese or Chinese gentleman if he is offered dishes cooked in their style. I shall give one practical instance. When I was coming here to attend this Session of the Assembly, I came by way of Benares. I found a Bengali boy loitering and wandering about and he was trying to get into a third class compartment in order to go to Benares. I then inquired who he was and why he was wandering like that and where he came from and all that. He said he was coming from jail and that he had come to see a friend going to Allahabad; and when I further inquired why he was in jail and all

other particulars he told me frankly that he was sent to Madras Jail as a civil disobedience prisoner and that there the food which was supplied to him was so unpalatable that for four or five days he had to starve, and after repeated applications to the jail Superintendents, he got a kind of rice cooked in such a way that it was almost impossible for him to try a single spoonful of rice. Honourable Members here can easily realise what that means. Even if they go without food for a single day, it brings on so much weakness; and they can easily understand what it means to go without food for days together; and generally speaking that is what often happens to these civil disobedience prisoners of the C class. I do not care what amount or kind of labour this class of prisoner has to undergo, but I do certainly attach importance to the food he gets. He ought to get much better food . . . . .

**Dr. A. Suhrawardy:** In jail.

**Mr. D. K. Lahiri Chaudhury:** Of course in jail. Why not in jail? And especially so in the case of these detenus who are being supplied with bad food and against whom no charge can be framed. I think Dr. Suhrawardy will agree with me there.

**Dr. A. Suhrawardy:** Certainly.

**Mr. D. K. Lahiri Chaudhury:** I should next like to mention the loss these detenus have to undergo owing to lack of sufficient correspondence. Suppose a man with an estate in Bengal is sent to Burma and there is some litigation pending in connection with his estate; he has to send a *vakalatnama* from there and do many other things, and it is very difficult to send these in time from such very distant places. The result is that he loses heavily solely because of the distance and of the lack of correspondence.

Another point is this. I can quite realise the position of Government, who say that letters must pass through their hands and all that. But some arrangements must be made to give them better facilities for earlier and more speedy correspondence.

Lastly, I come to the question of the settlement of disputes, and as an illustration I could cite an instance which I hope my Honourable friend in front of me will himself bear witness to when he was in Mandalay jail. It occurred in 1926 when he was there. What was the grievance? What did they want? They simply wanted a place for their worship; and as you know, Sir, every Indian understands, and I think even an Englishman and every man who really believes in the worship of his own deity or God can easily concede the right of every man to worship his God in his own way. This request was not granted and they sent an ultimatum of ten days; but full twenty three days elapsed and no decision was given and then they went on hunger-strike. All that I want to emphasise is this. Government say there is a necessity for sending out men to different provinces. May I ask the Honourable the Mover of the Bill as to how many detenus are going to be sent to different provinces? So far as I can gather from the statistics—I do not know how far I am correct and I hope the Honourable the Home Member will enlighten and correct me if I am wrong—there are only four detenus who were sent to Ratnagiri jail, six were kept in Madras jails, and about a dozen and a half in Burma. If

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it is only for these men that the Honourable Member finds it necessary to promote legislation like this, I can say with confidence and with common sense on my side, that it is not necessary at present at all.

The Honourable Member then said it was absolutely necessary for the Government to put through the measure quickly. But as has been pointed out by my Honourable friend, Mr. Abdul Matin Chaudhury, a good sense is now prevailing abroad and it is hoped that it will bring about peace and harmony in the country; and it is only quite recently that His Excellency the Viceroy, in discussing the features of the present situation, expressed a feeling that real co-operation and harmony and peace will be restored as early as possible. Under these circumstances, I do not understand why the Honourable the Home Member should seek to rush this Bill through so soon without giving any cogent argument in support of it. If, as an Honourable Member who interrupted my friend Mr Abdul Matin Chaudhury in the course of his speech said, the jails are overcrowded with prisoners, I can just tell him one thing.

**Mr. Gaya Prasad Singh:** I never supported that.

**Mr. D. K. Lahiri Chaudhury:** Many thanks. I merely want to tell the House this: that in that case there is a jail at Buxa in the Alipore Dooars which is a sufficiently safe place for these detenus if the Government wishes to place them there. Round the jail there, there is a big barrier which is very high, and on the top of that barrier there is barbed wire, which generally carries such a high voltage of current that a mere touch is sufficient to cause death. Surely in a jail like that the Government could place these twelve or thirteen men separately and accommodate them there easily; there is no necessity of sending them to other places if they are too dangerous to be kept in Bengal itself.

In these circumstances, Sir, we on this side of the House, especially Bengalis, cannot see that there is any necessity whatever for rushing through with this Bill. With these observations I oppose the Bill and support the amendment moved by my friend, Mr. Abdul Matin Chaudhury.

**Mr. Arthur Moore** (Bengal: European): Sir, as several voices from Bengal have already been heard in one sense, those of us who represent a Bengal constituency here would like to put another point of view. The whole of this subject of dealing with a terrorist movement and of detaining people without trial, or with forms of trial where the evidence cannot be produced, is, as we all know, beset with the very greatest difficulties. And it occurred to me just now, when my Honourable and learned friend, Sir Abdur Rahim, was speaking, that he himself provided us with a new illustration of those difficulties. For unless my memory is at fault, and I am entirely open to correction by my Honourable and learned friend,—I think he was a Member of the Bengal Government—I am not even sure that he was not at the time the senior Member . . . .

**Mr. B. Das** (Orissa Division: Non-Muhammadan): He was part of a soulless machine.

**Mr. Arthur Moore:** That is not quite how I would put it, but I think that my Honourable and learned friend was actually a Member of the Government which introduced the original Ordinance and which introduced the original Bill in 1925, with which we are dealing now.

**Mr. S. C. Mitra** (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): That is not before the House. The question is only about the transfer of detenus.

**Mr. Arthur Moore:** Yes, quite, but it is made necessary by the re-enactment in 1930 of a Bill originally introduced in 1925, and I must say that this morning when I heard my friend say . . . . .

**Mr. S. C. Mitra:** You raised the point.

**Mr. Arthur Moore:** . . . in reference to the Punjab Bill that he had never before heard of emergent legislation for a period of five years that, it did occur to me that my Honourable and learned friend was suffering from a certain lapse of memory. . . . .

**An Honourable Member:** No, from a change of climate.

**Mr. Arthur Moore:** . . . because he himself was a Member of a Government which introduced this very emergent legislation which he said he had never heard of for a period of five years.

**The Honourable Sir Brojendra Mitter** (Law Member): I think my Honourable friend was then in charge of Jails.

**Mr. Arthur Moore:** I think that is one illustration, because I have not the slightest doubt that the urgent reasons which were sufficient to convince my Honourable and learned friend of the necessity for these measures in 1925 have unfortunately not diminished, or shall I put it, though they have diminished in the interval they are again most unfortunately in full operation. The objection to detention without trial we all feel. The Bengal Government have made an effort to mitigate it; they cannot possibly remove it. It is inherent in the nature of the case, as Sir Alexander Muddiman made clear in the speech . . . . .

**Mr. Gaya Prasad Singh:** But how has the Bengal Government mitigated it?

**Mr. Arthur Moore:** That is what I am coming to. The Bengal Government endeavoured to mitigate it, though they could not remove it, by the provision that the evidence should in every case be submitted to two Sessions Judges. Well, Sir, that is, as we all know, a mitigation, but only a mitigation. Granted that, when you are dealing with a terrorist movement, you have to establish this practice of detention, it seems to me that if there are overriding necessities for detaining people outside their own province, provided the detenus are properly treated in regard to accommodation and food, it is not of the same importance as to where exactly they are detained. They are in any event not enjoying their normal liberties, and that is inherent in the case.

Now, Sir, this is a time when I think that we are all anxious at a critical period of the constitutional history of India to do nothing and say nothing that could promote ill feeling, and we have heard from the Honourable the Home Member this morning that for reasons of that nature the Government have decided not at the present moment to proceed with two Bills. In dealing with his Bill, which the Government cannot drop because of their obligations to the Bengal Government, I observed that the Honourable the Home Member refrained from building up his case, that is to say, he did not bring before us in detail the recent terrorist

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outrages which have, I believe, shocked all Members of this House. I feel that a response of some kind on our part would be in place. We have to remember that there is a vast difference between a purely political prisoner and a prisoner who is accused of complicity with a terrorist movement. And, Sir, I would call the attention of the House to the fact that this Bengal Act does definitely apply and apply only to people connected with the terrorist movement. It is not a matter affecting purely political prisoners. I think that this is not a moment at which this House would desire to associate itself in any way with what may be called a sympathetic protest on the terrorist side. Surely we wish emphatically and in every possible way to dissociate ourselves from that movement. I am not suggesting that the House should be asked—because I know that that would not be in any way in accordance with the feelings of Honourable Members opposite—to associate themselves with any form of disapproval of what may be called Satyagraha, or of arrests which have taken place recently in phases of non-violent non-co-operation. But we are dealing here with terrorism, and Governments faced with underground movements are in a very difficult position. I think that if my Honourable and learned friend found it necessary to ask for all these powers in Bengal in 1925, we in the position which exists in January 1931, and in view of events, very very recent and very distressing events, should not refuse those powers to Government when they ask for them.

**Mr. Gaya Prasad Singh** (Muzaffarpur *cum* Champaran: Non-Muham-  
 4 P.M. madan): Sir, I should like to add only a few words to the debate, and that will mostly be in answer to one observation that fell from my Honourable friends, the Home Member and Mr. Arthur Moore. They seem to have made a great point of the fact that one of the provisions of the Bengal Criminal Law Amendment Act, 1930, is to the effect that the material facts of each case have to be placed before two Judges of the status of Sessions Judges, or Additional Sessions Judges. This makes it necessary for me to recapitulate in as few words as possible some of the salient features of the Bengal Criminal Law Amendment Act; and in doing so, I promise I shall be very brief.

Under section 2 of that Act, it is the Local Government and the Local Government alone which has been vested with the power of committing into custody without trial any person against whom it is satisfied that he has committed an offence mentioned in that section. Under section 9 of the Act, the material facts of the case have to be placed before two Judges who have exercised either the powers of Sessions Judges or of Additional Sessions Judges. The material facts and circumstances that are in the possession of the Local Government have to be placed before the two Judges mentioned therein. But is the finding or report of the Judges binding upon the Local Government? No. In sub-section (2) of section 9, it is stated that, "On receipt of the said report the Local Government shall consider the same and shall pass such order thereon as appears to the Local Government to be just and proper". So, not even the finding of the Judges, based as necessarily it will be on one-sided evidence, is binding upon the Local Government. Therefore, it is executive action throughout that prevails. Sub-section (3) of the same section says that, "Nothing in this section shall entitle any person to attend in person or to appear by pleader in any matter connected with the reference to the said

Judges, and the proceedings and report of the said Judges shall be confidential". I ask, is this a trial, or even the mockery of a trial, that has been given to the detenu? It is seriously urged by my Honourable friends on the other side that they have provided a very good safeguard against any miscarriage of justice. The whole evidence is absolutely one-sided and tainted. It is recorded in the absence of the person most vitally interested. He has no right to appear before the Sessions Judges; he has no right to appear either in person or by pleader. I am not aware if any stage has been provided in the Bengal Criminal Law Amendment Act at which the explanation or the defence of the accused—I mean to say, of the detenu—is to be taken. In these circumstances the man is held guilty of an offence not known to himself. In the first place, the man is sent to jail in his province. Then it is now proposed to intern him, not in his own province, but in a distant place. All the objections to deporting him to a distant place have been mentioned by my Honourable friends who have spoken before me, and it is unnecessary for me to repeat them. My Honourable friends on the other side have held up before us the dangers of the terrorist movement. We all abhor on this side of the House the terrorist movement; but the terrorist movement is not on one side only. The terrorist movement sometimes proceeds from the side of some people who are misguided; and it also proceeds, as at present from the side of the Government, who are imprisoning and shooting down people and making *lathi* charges all over the country in a lawless endeavour to repress the nationalist movement. This is also a serious danger which must be guarded against. It is no good for the Government to come here and ask us to give them powers to fight the terrorist movement which comes from the side of the people. The Government also must not transgress the limits of the law and set an example to the terrorist activities of some people. With these few words, Sir, I oppose the Bill.

**Mr. C. S. Ranga Iyer** (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, it is a matter for supreme satisfaction that a responsible Member formerly associated with the Bengal Government has dissociated himself from the Government of India, for the very simple reason that they are trying to extend the tentacles of what I may call a constitutional form of terrorism. The Act on which this Bill is based is nothing more and nothing less than a form of legalised despotism. Sir, was it not Lord Lytton, the then Governor of Bengal, who publicly stated that he asked the Judges of the High Court to go into those dead documents, for documents which do not see the light of day are dead documents—to go into those dead documents and then give their opinion whether people with whom those documents dealt were criminals or terrorists or not. The High Court Judges of Calcutta refused to go into the dead documents. That is a fact which the Honourable the Home Member or any other Government Member, including our new Leader of the House, cannot deny.

**The Honourable Sir James Crear:** I have no knowledge whatever of any such refusal having been made.

**Mr. C. S. Ranga Iyer:** I beg your pardon. I have not at the time before me the proceedings of this House, but I can read to you—and it is on the record of the proceedings of this House—an identical passage which I quoted on a previous occasion when Sir Alexander Muddiman was the Home Member, and that statement could not be contradicted, from a speech of Lord Lytton made, if I remember aright, at Noakhali or some

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such place, in which he clearly stated—I am almost quoting his words—that, “If the High Court Judges did not agree to sit in judgment over these cases, it is not our fault. We asked them, but they did not agree.” I would ask the Home Department to furnish the Honourable the Home Member in this particular matter with the facts bearing on the situation, overworked as he is with the reforms question on the one side and with repression on the other. Sir, I say that my statement is absolutely correct and it is on the record of the proceedings of this Assembly. But even if the High Court Judges had agreed—thank goodness! the Judges of the High Court of Calcutta have not agreed and in that way they have not agreed to pollute the fountains of justice—but even if the High Court Judges had agreed, it would have made no difference to us. Supposing two Judges sat in judgment over certain things which they saw in private, do you mean to say that I should accept it, that the Indian public should accept it, that any Englishman would accept it? It is an elementary principle of English jurisprudence that every man who has not been proved to be guilty is innocent. And in this particular case we have these people, whom you call criminals, whom you describe as terrorists, whom you label as anarchists—have any of them been proved to be guilty? Prove they are guilty and send them to the gallows. Guilty men must be imprisoned or destroyed in whatever form your law prescribes their imprisonment or destruction. But I do not for a moment agree that these men whom you have put in prison, whom you put in certain places under some internment kind of Regulation or under these laws, I do not for a moment agree that they are guilty. It is well and good for the European Member from Calcutta to assume that they are “connected with the terrorist movement”, but he is insulting the intelligence of this House when he asserts that because of recent terrorist outrages we are asked to give “a sympathetic protest” by accepting this Bill. I say in this respect the Honourable the European Member from Calcutta has once again illustrated that it is the European community,—about which we read a good deal in Mr. Montagu’s Diary,—(Laughter) which is always worse than the official community, and the fact of the European community being worse than the official community was fully shown by the restraint with which the Home Member spoke and the lack of restraint which characterised the European Member’s speech. He was asking us, “Do you believe in terrorism? You don’t. Then vote with us. You may believe in Gandhism”. Gandhism is not the subject that is being discussed. “If you don’t believe in terrorism, then come into my lobby”. That is what he was saying to-day. Possibly when we go further into this Session of the Assembly, when the tentacles of the Press Bill will come before us, he will deal with Gandhism and then say, “If you believe in Gandhism, please don’t vote with us. If you don’t believe in Gandhism, then vote with us for the Press measure which is meant for the Gandhist Press”. We do not believe in that kind of logic. If we believed in terrorism and in the opposite of constitutionalism, we would not be present in this House. If we believed in the movement for the breaking up of laws either in a violent or non-violent manner, we would not be here. We should be somewhere else and have taken the consequence. It is, I think, utterly insulting for the Member of the European community to come and tell us, “It is a pure question of sympathetic protest against recent outrages in Calcutta”. Who

in this House could have sympathised with those serious outrages in Calcutta? Some Members of this House must have already protested. Some others may not have expressed their protest by not having had the opportunity. But if the Government wanted to have the opinion of this House on the recent outrages in Calcutta, the proper thing for the Government to do would be to bring in a motion before this House and ascertain the views of Members of this House, and not to bring in a measure of this kind, which has nothing whatever to do with the recent outrages in Calcutta. At any rate, on this particular matter we want the Home Member to be explicit, and so long as the Home Member does not hold that opinion, and so long as the Home Member does not call upon us to give an opinion whether we are voting for the recent outrages in Calcutta or against the recent outrages in Calcutta, it is permissible to examine this question in the very narrow form in which it is put and not in the very broadened form in which the European Member put it, and it is because of the broadened form in which he put it before us, that he referred to Sir Abdur Rahim, one of the greatest public men of India and at that time Member of the Bengal Government, and he said, "As you were a Member of the Bengal Government at the time when this measure was passed and as you are now here in this House, how on earth can you go against this measure?" We are not to-day discussing the measure passed by the Government of Bengal when Sir Abdur Rahim was a member of it. If the Government of India want to invite us to discuss that question, we are here quite prepared and quite willing to discuss that question, and I think Sir Abdur Rahim will contribute his wisdom to that discussion in the new light, taking into consideration the totality of the circumstances to-day. The Round Table Conference was not sitting in London when Sir Abdur Rahim gave his consent to the measure for reasons known to him then and which as a responsible man he cannot disclose to the House today. We are talking of a new situation. We are talking of approaching things with sympathy. We are asked to co-operate and we expect that co-operation to be responsive. It is the lack of that responsive co-operation that is responsible, on the part of the Government, for forcing us to do a double wrong to people who have already been wronged once. For, Sir, it is a double wrong to transport Bengalis from Bengal to some other province, and if the Government wanted to know the public opinion in the matter of the outrage of keeping a prisoner belonging to one province in another province, they could easily have read the opinions expressed up and down the country in the Press and on the platform over the keeping of an *ex-President* of this House in a province to which he did not belong. They put him on a diet which perhaps would have been different had he been kept in his own province and kept him in an atmosphere to which he was most certainly not accustomed. If you want to take away men's liberties without a trial, as you have agreed to do under this measure, do not take them away from the place to which they belong. Do not put their relatives to the difficulty of travelling long distances in order to have an interview with them. Most of these internees are not very rich people. I know what it is for these poor people to travel long distances in order to have an interview with the internees. You do not deny them interviews. You have not transported them to the Andamans. You say you will take them away from Calcutta to Cape Comorin. Then the relatives of these internees have to travel all the way from Calcutta to Cape

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Comorin, face the discomforts of third class travelling, eat a very different kind of food to that which they are accustomed in what you are pleased to describe as the "Seventh Continent". In this continental country you are transporting them from Calcutta to Cape Comorin or perhaps to Baluchistan.

**Dr. A. Suhrawardy:** Or from Madras to Kumaon.

**Mr. C. S. Ranga Iyer:** Or from Madras to the wilderness of Kumaon.

If you want to transport a political prisoner from the Presidency of Madras to the wilderness of Kumaon, I would certainly object to it, and even my friend Mr. Muhammad Yakub might object to it. Now, Sir, the question is why should you be so unjust as to inflict a double punishment on a set of people whom you have already punished once. You not only punish them. You punish their relatives. You deprive them of the very privileges you have provided them, including the privilege of interviews. This is nothing short of a scandalous outrage. I am sorry that the Government of India, after the speech that was given to us, on the 17th instant, should have brought this measure forward, which shows that it is a fascinating combination of shyness and slyness. Four hundred years ago, there was a propounder of a philosophy which the Government of India are practising today. His name was Machiavelli.

**Mr. President:** Order, order. I should like to know the feeling of Honourable Members as regards adjourning the business of the House today. I had expected that we might be able to complete our work today, but I find, having regard to the progress already made, that we will have to meet tomorrow. I should like to know whether it is your desire to go on till 5 o'clock or adjourn now till tomorrow.

(Voices of "Adjourn" from non-official Benches.)

**The Honourable Sir George Rainy:** As we must in any case meet tomorrow, I suggest that we might adjourn now.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 20th January, 1931.