LEGISLATIVE ASSEMBLY DEBATES

SATURDAY, 12th MARCH, 1932

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OFFICIAL REPORT

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LEGISLATIVE ASSEMBLY.

Saturday, 12th March, 1932.

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

MESSAGE FROM HIS EXCELLENCY THE VICEROY AND GOVERNOR GENERAL.

Mr. President: Order, order. I have received an Order from His Excellency the Governor General regarding the allotment of an additional day for the discussion of the Demands for Grants, and I shall read it out to Honourable Members.

(The Order was received by the Assembly standing.)

"In pursuance of the provisions of sub-rule 1 of rule 47 of the Indian Legislative Rules, I, Freeman Freeman-Thomas, Earl of Willingdon, hereby allot Saturday, the 19th March, 1932, as an additional day for the discussion of the Demands of the Governor General in Council for grants."

(Signed) WILLINGDON,
Viceroy and Governor General."

NEW DELHI;
The 9th March, 1932.

MOTION FOR ADJOURNMENT.

Lathi CHARGE BY THE POLICE ON A MEETING IN DELHI.

Mr. President: Order, order. I have received a notice from Maulvi Sayyid Murtuza Saheb Bahadur that he proposes to ask for leave to make a motion for the adjournment of the business of the House to-day for the purpose of discussing a definite matter of urgent public importance, as follows:

"That the business of the Assembly be adjourned for discussing the severe *lathi* charge by the Police yesterday on a peaceful meeting convened by the Jamiat-ul-Ulema-i-Hind and the Majlis Ahrar, Delhi."

I have to inquire whether any Honourable Member has any objection to this motion.

The Honourable Sir James Crerar (Home Member): Sir, I must take objection to this motion. I am not fully apprised of the facts, but I understand that the incident to which the Honourable Member refers was in connection with the arrest of a gentleman connected with the organization to which he also refers and that judicial proceedings in regard to that incident are imminent. It appears therefore almost inevitable that the circumstances connected with the arrest in question will shortly be coming up before a court of law that the matter will be *sub judice*, and that therefore this motion ought not to be allowed.

Maulvi Sayyid Murtuza Saheb Bahadur (South Madras: Muhammadan): Sir, having heard the Honourable the Home Member, I have to invite the attention of the House to the fact that the *lathi* charge on the peaceful meeting which was convened by two bodies which have not yet been declared unlawful associations is proposed to be discussed to-day, apart from the arrest of Mufti Kifayatullah. I am not at all going to deal with the question of his arrest. I shall confine myself to this one point that there was a severe *lathi* charge on a peaceful meeting convened by two respectable bodies yesterday. This has resulted in many persons being wounded, and two of them being seriously wounded, and one of them is about to die. That is the state of affairs. If such an important and urgent question is not allowed to be discussed to-day but is put off till some other day, well, that would be a great pity.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair would like further enlightenment on the issue as to whether the subject-matter is *sub judice*. As far as the Chair has been able to find out from the statement so far made, judicial proceedings are intended to be taken hereafter in regard to the arrest of some people, but the action of the police in indulging in a *lathi* charge can have, so far as the Chair is at present inclined to think, no connection with any judicial proceedings which might be taken. (Hear, hear.) If any further observations as regards the facts are desired to be placed before the Chair, the Chair will be glad to consider them.

The Honourable Sir James Crerar: It is impossible, Sir, for me to say definitely what precise shape the judicial proceedings are likely to take, but what I do suggest is this that as the incident to which my Honourable friend refers is connected with this arrest, it is extremely likely that that incident will be a matter coming before a court of law and that therefore on that ground we ought not to discuss it.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Having heard the Home Member, the Chair has come to the conclusion that there is no connection between the two. (Hear, hear.) The Chair will therefore put the objection to the House by saying that, as objection has been taken, I would request those Honourable Members who are in favour of leave being granted to rise in their places.

As less than 25 Members have risen, I have to inform the Honourable Member, Sayyid Murtuza Saheb Bahadur, that he has not the leave of the Assembly to move the motion. (Applause from the Official Benches.)

ELECTION OF A MEMBER TO THE STANDING ADVISORY COMMITTEE FOR THE DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

Mr. President: Honourable Members will now proceed to elect a non-official Member to the Standing Advisory Committee for the Department of Education, Health and Lands. There are two candidates whose names are printed on the ballot papers which will now be supplied to Honourable Members in the order in which I call them.

(The ballot was then taken.)

THE INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

Sir Frank Noyce (Secretary, Department of Education, Health and Lands): Sir, I move for leave to introduce a Bill further to amend the Indian Merchant Shipping Act, 1923, for certain purposes. Sir, the objects of this Bill are so clearly set forth in the Statement of Objects and Reasons and in the detailed notes on the clauses that it is unnecessary for me to do more than to explain to the House that it is the first of a series of three measures designed to give legislative effect to such of the recommendations of the Haj Inquiry Committee as require legislation. The other two measures will deal with the control of *muallims* and the constitution of Port Haj Committees. The fact that it has taken so long to give legislative effect to the valuable recommendations of the Committee owing to the necessity for consulting Local Governments and Administrations, the Chambers of Commerce and the numerous other interests affected, does not, I need hardly assure the House, mean that no action has been taken on the other parts of the Report. The examination of all the recommendations made by the Committee has been completed. Government have gone into them all most carefully in consultation with the Standing Haj Committee of this House, and I need hardly say that where Government have considered action should be taken that is in regard to the great majority of them, action has already been taken.

Sir, I move.

The motion was adopted.

Sir Frank Noyce: Sir, I introduce the Bill.

THE BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL—*contd.*

Mr. President: The House will now proceed with the further consideration of the Bill to supplement the Bengal Criminal Law Amendment Act.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I have listened to the criticisms of my Honourable friends yesterday, and lest those criticisms be multiplied, I think it well that I should explain to the Honourable Members my own position in regard to

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this Bill. Honourable Members are aware that when the question of reference to the Select Committee was before this House, I delivered a speech from which the Honourable Members could have drawn no other conclusion but one, that I was not in favour of the principle of the Bill. But even after the delivery of that speech and the lead which the Honourable Members wanted me to give, I found that a great many of my colleagues, including some of those hailing from the province of Bengal which is directly affected by the Bill, did not challenge that motion by a division. The House having, therefore, without a division acceded to the motion for reference to the Select Committee, the Select Committee felt bound by the acceptance of the principle of that Bill.

Honourable Members will remember that when the discussion was going on in this House, there was a reshuffling of the membership of the Select Committee. My name was added to the Select Committee. The reason why my name was added is well known to my Honourable friends who added that name. They knew full well that when I became a Member of the Select Committee, I would have to take the Chair. After the emergence of the Bill from the Select Committee Honourable Members have treated me to a long sustained diatribe against the iniquity of the Select Committee as if I were both the Bill as well as the Select Committee. I recognise the compliment which Honourable Members have paid me in that regard, and I shall, therefore, briefly explain to Honourable Members my participation in that dual character. In my view of constitutional propriety, which I know some Members including some of my colleagues sitting in front of me may challenge, the position of the Chairman of a Committee is analogous, if not identical, with the position which you, Sir, occupy in this House. The Chairman of the Select Committee is like the umpire for the time being. My Honourable friends may say that he is not the umpire, at any rate, he is in the position of the keeper of the ring to see that there is fair-play on both sides. If that were all, I would perhaps be relying upon an analogy, and I will, therefore, ask Honourable Members to refresh their memories by what is laid down as the invariable practice followed in the Mother of Parliaments. In May's Parliamentary Practice, at page 449, we have the following passage:

> "The main difference between the proceedings of a committee and those of the house is that in the former a member is entitled to speak more than once, in order that the details of a question or bill may have the most minute examination;"
>
> "Order in debate in a committee is enforced by the chairman, who is responsible for the conduct of business therein; and from his decision no appeal should be made to the Speaker, nor should an appeal from the decision of the deputy chairman or a temporary chairman be made to the chairman of ways and means on his resuming chair. . . . . The rules observed by the house regarding order in debate are followed in committee."

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Is not the Chairman of a Committee to be consistent both inside and outside the Committee?

Sir Hari Singh Gour: My Honourable friend, colleague and co-Chairman asks me the question: is not the Chairman of the Committee to be consistent with his expressed opinions as a Member of the House? My answer is that when a Member occupies the Chair, he ceases to be a

partizan and he becomes the upholder of the rights and privileges of the House and has to carry on the rules and regulations by which he is bound.

An Honourable Member: Question.

Sir Hari Singh Gour: At any rate, if that is not the exalted notion of my Honourable friends who have occasionally to fill that Chair, I beg to differ from them.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Did the Honourable Member take up the same position when he was the Chairman of the Air Force Bill?

Sir Hari Singh Gour: I did. If I had not done so, I would have put in a very strong minute of dissent. However, the position as I take it is this: whatever may have been the shortcomings of the members of the Select Committee, whatever may have been the view expressed by the Members singly and collectively, there cannot be any shadow of doubt as to what my own views were and they remain the same even now. Feeling as I do, free from the trammels of the obligation to which I have referred, I re-echo the sentiments of all my Honourable friends who have said that they do not like the look of this Bill. I do not for one moment suggest that those Honourable Members who are opposed to this Bill are in any degree in sympathy with the terrorist crimes in Bengal and elsewhere. But sitting here as we do, as Members of the Central Legislature, our duty is to take an impartial survey of the situation as we find it in any part of the country, Bengal or elsewhere, and to see whether the powers we give by the Act of our creation are powers which are necessary for the ends of justice, and such as are not likely to be abused by those who would be charged with the duty of executing them. That being the case, I said in the opening speech which I delivered, that while I did not like the Bill at all, I had at any rate one small consolation, and it was that the Bill was to have a short life, and that the new constitution, which would bring into existence a responsible Central Government, would have the chance of re-doing our work when it assumed the reins of office. I then said that, though we did not like the principle of the Bill, we were quite prepared to see that if the Government were able to ameliorate the conditions of the people banished from Bengal, we should be prepared to give the Bill a short lease of life. The Honourable the Home Member is in possession of rules by which these detenus are governed. Honourable Members on this side of the House should take the opportunity of reading those rules and examine them for themselves as to whether they are or are not satisfactory so far as the detenus are concerned.

It may be that these rules are inadequate; it may be also that these rules do not provide for that degree of amenity and comfort to which the detenus should be entitled when they are taken away from their native homes. In that case two things should be borne in mind. One is suggested by the Honourable Members on the Opposition Benches, namely, that if those rules are good and sufficient, why should they not be embodied in the Act? And the second thing is that if they are not good and sufficient then those rules do not in any way mitigate the hardships complained of. Now if those rules are good and sufficient, I would be the last person here to ask this House to embody them as a part of the Act.

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And the reason is obvious, namely, that if those rules remain as rules framed under the Act, we can always use our pressure upon the Executive Government to change them from time to time, and from day to day, which we shall not be able to do if they are embodied as a part of the enactment. Therefore, I say that if the rules are good and sufficient, the very best of reasons exists for leaving them out of the Act; but if they are insufficient, that is another matter, and we should press upon the Government that the rules should be implemented so that the conditions for which Members have spoken are ensured in the detention camp proposed to be opened.

Sir, on the last occasion when this Bill was under debate, we only heard the name of that desert island, Ajmer, but nobody said that these detenus were to be taken away from Ajmer and that they were to be incarcerated in some isolated place or fort called Deoli which had been repaired for this purpose. Well, Sir, if it is a fact, as has been stated by my friend Mr. S. C. Mitra on the authority of my esteemed friend Diwan Bahadur Sarda, that the intention of the Government is to expatriate these people not to Ajmer but to some outlying place in the Ajmer province, the situation would be far worse than what we had expected when the Bill was consigned to the Select Committee. On the last occasion I stated, Sir, that whether these detenus were incarcerated in Ajmer or locked up in the Government House at Calcutta, I could not reconcile myself to the fact that their detention was not aggravated by their deportation, and that I objected to their being bottled up in one place, it does not matter where. I will submit that that argument becomes doubly strong when you take them away to a distant place far removed from human habitation and there keep them in durance vile for an indefinite period and without recourse to the ordinary remedy open to an ordinary convict or to an ordinary person arrested for the most heinous crime under the statute law. That, I submit, is a consideration which this House cannot ignore. We have not heard from the Honourable the Home Member what is the exact place of detention which has been settled.

The Honourable Sir James Crerar (Home Member): Sir, I made that perfectly clear in my speech in an earlier part of the debate.

Sir Hari Singh Gour: May I ask the Honourable the Home Member whether the perfectly plain statement he made refers to the city of Ajmer or to any place in the Ajmer province?

The Honourable Sir James Crerar: I will read the passage to the Honourable Member:

> "We have also informed the Bengal Government that if and when this Bill is enacted, what we have in mind as an immediate measure is the transfer of a certain number of those who fall within the category I have mentioned to a locality within the province of Ajmer-Merwara, a place which has an extremely salubrious climate, where there are also excellent buildings already in existence," etc.

Sir Hari Singh Gour: Beautifully vague and beautifully expressed,—"a locality within the province of Ajmer-Merwara"! But may I ask how far away is it from the sandy tract, how far away from the nearest human habitation and how far away from the railway station? Well, Sir, when

Mr. S. C. Mitra disclosed the name of the place, I am afraid it is information upon which we can safely rely unless it is contradicted by the Honourable the Home Member on behalf of Government. For the time being we will, therefore, assume that the Bengal detenus are intended to be cooped up in some wayside place called Deoli. Sir, I said last time, and I wish to repeat it once more, that if you take away a Bengali from the province of Bengal, you deprive him of that mental and bodily comfort which cannot be replaced. I have always held that a Bengali is made up of 99 per cent. of fish and one per cent. of Ganges water, and if you were to take him away to a place where he can get neither one nor the other . . . . .

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): But the majority of them are Muhammadans.

Sir Hari Singh Gour: They also feed on fish. If you were to take them away from the humid climate in which they are born and brought up and to which they are accustomed, you would be adding to the sentence of banishment a larger and greater sentence of mental torture and physical suffering which would be in my opinion, and in the opinion I think of my friends on this side, a far greater hardship than if you had sent them across the seas under penal servitude for life. Some of the Honourable Members, when they got reconciled to this Bill, had, at the back of their minds, a feeling that if they were to turn down the Bill at that stage, it might be that the detenus would be removed to the Andaman Islands or anywhere beyond the seas, and I think the Honourable the Home Member would probably find a favourable response from this side of the House if an assurance was forthcoming that on no occasion and in no circumstance the detenus from Bengal would be given an island home outside the mainland of India. I therefore feel that upon general considerations I would not be justified in lending to the Bill any greater support on this occasion than I did on the last; and my reason for taking that view is further fortified by a close and critical examination of the several provisions of the Bill to which I should like now to advert briefly.

Sir Cowasji Jehangir: Why did you not do it in the Select Committee?

Sir Hari Singh Gour: Honourable Members will find that this Bill is intended to supplement the Bengal Criminal Law Amendment Act of 1930. Now, the Bengal Criminal Law Amendment Act of 1930 has got a life of five years from the date of its enactment, that is to say, it will expire in 1935; but we know that a similar Bill was enacted under the power of certification in 1925. Now, if this Bill of 1930 is by an amending Act further extended to a period of another five years, have we any guarantee that by enacting this measure we shall not be depriving ourselves of the power of revision after the period for which this House is prepared to pass the supplementary Bill? This Bill merely lays down that this Act may be called the Bengal Criminal Law Amendment (Supplementary) Act, 193 . I am not a constitutional purist, but on a close examination of the provisions of the statute law, I think it might be plausibly argued that if the Bengal Criminal Law Amendment Act is merely extended by amending the operative clause, it is an extending Bill and not a new Bill; and in that case *ipso facto* the provisions of the supplementary Bill would become extended to that larger period to which the main Act might be extended. But whether it is so or not, when we have a chance of making

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it clear, why should we not make it clear? We were told that the unexpired period for the main Act is some three years and nine months. Whatever may be the period for which the present Bengal Act is to run, there is no harm whatever in our limiting the scope of the supplementary Bill to a fixed period, say of three years, and I wish to suggest three years for this reason, that within a period of three years, the new constitution will come into force, and we must give the new Government the power and opportunity of reviewing our action on the expiry of that time, and I would, therefore, both upon the grounds of constitutional necessity, if necessity it be—and I do not wish to dogmatise upon that point—as well as upon the broader ground of expediency, limit the operation of the Act to a defined period of three years or four years as the House may determine.

The second point that has troubled me in connection with this Bill is the enactment of clause 4 dealing with the power of the High Court. Honourable Members have pointed out that if a detenu has been lawfully detained under the provisions of the Criminal Law Amendment Act of 1930, then the provisions of section 491 do not apply and cannot apply, and that was the view which the Honourable the Law Member gave expression to in an interjection; and with that view I am in entire agreement. If on the other hand a detenu has been detained in contravention of the provisions of the Bengal Criminal Law Amendment Act, then this section, section 491, would apply, notwithstanding the provisions of section 4, which merely safeguards any person arrested, committed to or detained in custody, or anything purported to be done under the provisions of the main Act. The position in short is this: if the man has been unlawfully detained, he has his remedy under section 491—the *habeas corpus* section of the Criminal Procedure Code. If he has been lawfully detained, then he has no remedy under section 491 of the Criminal Procedure Code. That was the view expressed by several Honourable Members and in partial support of that view the opinion of the Madras Advocate General was cited. But there is a further point which seems to have been overlooked by Honourable Members on this side of the House. Section 491 deals with two specific powers; the first is the right of having the body of the accused, that is to say, bringing the accused to trial; and the second is summoning him for examination as a witness in any proceeding before the court. Let me give you the substance of clauses (*c*) and (*d*):

"That a person detained in any jail situated within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court."

If a case is pending in the High Court, the High Court under section 491 has got the jurisdiction of issuing a summons to examine that witness for the purpose of a case unconnected with his detention. Then we have clause (*d*)—that a prisoner detained as aforesaid be brought before a court martial or any other commissioners and under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such court martial or commissioners, respectively. Paraphrasing the two clauses together, the High Court's jurisdiction is not merely to give justice to the accused, but also to give justice to some third person by calling the detenu as a witness before it. These are two distinct rights of the High Court. If you turn to clause 4, clause 4 repeals the whole of section 491, and thereby deprives the High Court not merely of the power of giving redress to the accused in an

offence of which he may have been guilty, but it deprives the High Court of the power of even calling him in as a witness in a case wholly unconnected with the guilt of the accused: it may be a case entirely independent of the case in which the accused has been detained.

An Honourable Member: Surely he can be subpoenaed under other sections.

Sir Hari Singh Gour: Now, Sir, I wish to ask what could have been the underlying principle of this sweeping clause, which takes away from the High Court even the jurisdiction to examine a person as a witness. I looked to the Statement of Objects and Reasons, and I have looked in vain, and I should certainly say that the draftsman who prepared clause 4 has presumably followed some earlier Ordinances, like the numerous Ordinances which have been prepared in their large and abundant terms and which this House one after the other on examination has found to be either excessive or wholly unnecessary. We have got for example the case under the Press Act in which you will find that we have made drastic changes in the drafting of the operative provisions of that Act, and very shortly you will have the Foreign Relations Bill in which you will find very material changes have been made in the operative clause . . . .

Major Nawab Ahmad Nawaz Khan (Nominated Non-Official): When you were a Member of that Committee you very clearly wrote that you did not want any amendment of this . . . . .

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Is this a point of order?

Sir Hari Singh Gour: My friend Mr. Neogy pointed out that if you refer to the last clause, it will give you the analogy—"Nothing in this section applies to persons detained under Regulation III of 1818, or Madras Regulation II of 1819 or Bombay Regulation XXV of 1827 or the State Prisoners' Act of 1850 or the State Prisoners' Act of 1858". That is the analogy. But that analogy does not hold good since this House has on several occasions passed Bills for repealing it. Well, so far the two points of view have been expressed, and on both these points of view we cannot say that the drafting of clause 4 is either free from fault or free from ambiguity, and I should like some explanation as to why the powers of the High Court have been set aside by . . . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola): I do not want to interrupt the Honourable Member, but it appears to the Chair that the Honourable Member is making a speech as if the principle of the Bill is before the House and the Select Committee has not sat. All the issues that the Honourable Member is now raising are issues for the consideration of the Select Committee, and re-drafting or amending the Bill as it was originally submitted to the House was the function of the Select Committee. The Select Committee ought to have dealt with the points which the Honourable Member is now raising, and as he was a Member of that Committee, he ought to have dealt with them there.

Sir Hari Singh Gour: Sir, I have already dealt with that aspect of the question. I am now dealing with the defects in the Bill which

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should weigh with this House in seeing whether it should or it should not let this Bill be taken into consideration. If it finds that these are defects which affect the material provisions of the Bill, this House will have to make up its mind; if, on the other hand, this House finds that these are immaterial defects which do not in any material degree influence its judgment, it will have to say so. Sir, I said on the last occasion, and I say once more, that whatever may have been the necessity for this Bill in 1925, when the question of the future constitution of this country was not on the horizon, now that that constitution is fairly in sight, the Government of India might well pause and just carry on before introducing any cataclysmic changes in the administration of the country affecting the life and liberty of the people of this country. Only the day before yesterday I read in one of the Overseas telegrams that that arch gunman, the head of a revolutionary movement, was now presiding over the destinies of an Island Kingdom and went to power upon a republican ticket. How many De Valeras may not be under detention, and who can say that in the fullness of time one of these detenus may not occupy the seats vacated by the Honourable occupants of the Treasury Benches? Let us not, therefore, do anything about which posterity may say that this Assembly, the last of its kind, has placed upon the Statute-book a measure which has not only curtailed the liberty of a man but has forfeited the sympathy of mankind.

The Honourable Sir Brojendra Mitter (Law Member): Sir, most of the speeches that we listened to yesterday might well have been delivered in the Bengal Legislative Council when the Criminal Law Amendment Bill was under consideration. Three-fourths of the debate yesterday were devoted to the principle of detention without trial. It is an abhorrent principle to every lawyer, to every administrator, but the Bengal Legislative Council, having regard to the circumstances in Bengal, thought it necessary to resort to that principle for a temporary period. We are not here to revise that Bill; that is not the purpose of this Bill. Therefore, all that criticism is beside the point as my friend Sir Cowasji Jehangir very pertinently pointed out yesterday . . . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola): This is the second Honourable Member who raises a question that the discussion yesterday was irrelevant. It was open both to Sir Cowasji Jehangir and to the Honourable the Law Member to rise to a point of order as to whether the speeches were relevant or irrelevant and the Chair would have given reasons why it holds that the whole discussion was perfectly relevant to the Bill that is now under consideration.

The Honourable Sir Brojendra Mitter: Sir, I had no intention whatever of making any reflection on the silence of the Chair in giving a ruling. When relevant matter is mixed up with irrelevant matter, it is very difficult to take a point of order. When three-fourths of irrelevant matter (Laughter from the Nationalist Benches) were mixed up with one-fourth of relevant matter, at what point one should rise to a point of order is a really difficult matter.

I do not want to refer to it any more. Now, the other criticism that was made which, in my opinion, is perfectly legitimate, is about the hardship which a transfer from Bengal to another province would involve,

and that is within the principle of this Bill. Sir, the Leader of the Nationalist Party at the beginning of his address this morning said, "I am not in favour of the principle of the Bill". But I find from the 12 NOON. Report of the Select Committee that the Honourable the Leader of the Nationalist Party said this:

"We, the undersigned Members of the Select Committee, to which the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill annexed thereto.

We do not propose that any amendment should be made in the Bill and we recommend that it be passed as introduced."

That is his written opinion, and to-day we have heard his verbal opinion. I ask my Honourable friend to reconcile the two. (Laughter.)

Sir Hari Singh Gour: Have I not done so?

The Honourable Sir Brojendra Mitter: Anyhow, I do not want to make a debating point. I shall come to the substance of his criticism. It is, after all, not his conduct but the merits of the Bill which we are discussing.

Before dealing with the points made by other Honourable Members, I shall deal with Sir Hari Singh Gour's point first. He said, in enacting clause 4 of the Bill you are taking away a valuable right which is given to other people in citing a detenu as a witness. That is so. Section 491 sub-section (*1*) clause (*c*) deals with the production of a detenu as a witness in a case. If clause 4 be enacted, surely the High Court could not order a detenu to be produced as a witness at any trial; that is quite true. But that is a matter which did not escape the attention of the Government, and on behalf of the Government I can give this assurance to the House, that if the High Court at any time comes to the decision that a particular detenu is required as a witness in any trial before it, then the Government of India will not stand in the way and the requisition of the High Court will be honoured every time.

Sardar Sant Singh (West Punjab: Sikh): May I enquire from the Honourable gentleman if the High Court will not look into the provisions of this Bill when passed into an Act and refrain from calling a detenu as a witness?

The Honourable Sir Brojendra Mitter: There is nothing to prevent the High Court from saying that in a particular trial the evidence of a particular detenu is necessary but by reason of section 4 it is not in a position to direct his production. Any expression of opinion of that sort will be taken count of by the Government of India, and I can give the House a definite assurance that, if the High Court wants a detenu to be produced before it as a witness, that detenu will be produced.

Mr. H. P. Mody (Bombay Millowners' Association: Indian Commerce): Would it not be better to give a specific direction of this character to the various High Courts so that the High Courts may know exactly where they stand?

The Honourable Sir Brojendra Mitter: Sir, I have known of cases in which prisoners under the Regulations have been wanted as witnesses

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and an indication of the desire of the Court was conveyed to the Government of India, and the Government of India have always to my knowledge complied with such requisitions.

Sir Hari Singh Gour: May I just ask the Honourable the Law Member a question? Whatever may be the undertaking by the Government of India, the clause as it is enacted is too wide. He admits that.

The Honourable Sir Brojendra Mitter: I am coming to that. I am making these observations in order to meet a possible grievance that a detenu may not be forthcoming as a witness at a trial. In practice, I challenge any Member of this House to cite any particular case in which any trial has been hampered by the non-production of a witness who has been in custody under the Regulations, because the Regulations . . . . .

Mr. C. C. Biswas (Calcutta: Non-Muhammadan Urban): In that case, was it not possible for the Government to have excepted this particular clause of section 491 from the operation of this Bill?

The Honourable Sir Brojendra Mitter: It was never suggested, not even in the Select Committee, and if any such amendment were before the House I might have had something to say on that. I am only—since that question was raised by Sir Hari Singh Gour this morning—I am only explaining the position. The position is this, that aspect of the question is not in the interest of the detenu; it is in the interest of somebody else—somebody who is an accused in a case. In the interest of that accused, if a detenu is required, what would be the position? Hitherto, we have been discussing the interest of the detenus themselves. But this is not in the interest of the detenus; this is in the interest of a third party.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): May I ask, is it desirable that the matter should be placed at the discretion of the Government whether the High Court should be able to call a detenu as a witness or not? Should not the High Court have the power to call a detenu as a witness if it chooses to do so?

The Honourable Sir Brojendra Mitter: In dealing with the class of people like the terrorists, Government must claim to have the discretion, as they have got discretion already in regard to Regulation prisoners. If my Honourable friend Sir Abdur Rahim will kindly look at sub-section (3) of section 491, he will find that we are doing nothing more than that. It says:

"Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818."

and the various other Regulations and Acts which are mentioned there. In those cases it is not the High Court which has got the discretion but it is the Government of India who have got the discretion. We are not going beyond that by one single inch. We are only bringing these detenus into line with prisoners detained under the Regulations. That is all we are doing, and nothing more.

Sir Abdur Rahim: You are extending it.

The Honourable Sir Brojendra Mitter: Is that discretion, which I claim ought to be vested in the Government—is that discretion any more serious than the discretion to detain a man indefinitely without trial? If you can swallow detention without trial, you ought to swallow this.

With regard to this witness argument, that is all I have to say, namely, that if a witness is required by the High Court, that witness will be produced,—that is the Government's undertaking. Secondly, my point is this, with regard either to the detenu himself or to the detenu as witness,—in either of these cases we are not going beyond what the Criminal Procedure Code has already enacted with regard to the Regulation prisoners.

Then, a very pertinent criticism was made by several Honourable Members yesterday, and again by Sir Hari Singh Gour to-day, why enact clause 4 at all—if in case of illegality this clause will not stand in the way of the High Court, why enact it at all? The answer to that has been given by the Advocate General of Madras, and I endorse that. What he says is this:

"I realise that there is this thing to be said in favour of the retention of clause 4, that section 491 already contains a provision to the effect that the remedy under the section is not available to persons detained under certain Regulations and the only effect of clause 4 of the Bill is to place the persons detained under the Criminal Law Amendment Act on the same footing as persons detained under the Regulations."

Mr. B. Sitaramaraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): The whole paragraph may be read.

The Honourable Sir Brojendra Mitter: The rest of the paragraph is irrelevant to my present argument. I shall read the whole paragraph when I come to those arguments which are contained in it. (Laughter.) but for the purpose of my present argument,—this is not a laughing matter—this is the only relevant portion, on the question of having clause 4 at all.

The Advocate General, Madras, deals with the case when the Government act illegally. I shall illustrate the point. Under the transfer clause —clause 2 of the present Bill—the sanction of the Government of India has to be taken before a detenu can be transferred from Bengal to some other province. Assuming that a detenu is transferred without the sanction of the Government of India, then the detention in that other province would be an illegal detention. In that case, clause (4) of the Bill will not prevent the intervention of the High Court. Then, the Advocate General deals with a person who is legally in custody, that is in consonance with the law. It may be good law, bad law or indifferent law, we are not concerned with that. He is lawfully in custody and 491 would not come in. In that case the High Court's power is taken away. That is the previous portion of the Advocate General's opinion and that is the portion which my friend Mr. Raju read yesterday. What is the use of burdening the reports by reading it over again but if Honourable Members want me to read it I shall read it, but I think it is unnecessary. All that the Advocate General says is this, that if the detention be illegal, then the High Court has jurisdiction to interfere but if it be legal, never mind whether that legality is sanctioned by an obnoxious law, even so, the power of the High Court is gone. That is the previous portion. Then he goes on to say that the retention of clause 4 is still necessary in order

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to bring the detenus under the Criminal Law Amendment Act into line with and in the same position as State prisoners under the Regulations. If you say, "Why do that?", my answer is this,—if this clause were not there, then in every case of detention, the argument in the courts will be this, that section 491 specifically mentions certain Regulations and certain Acts but does not mention the Criminal Law Amendment Act, nor is it mentioned anywhere else. Therefore, 491 applies to all detentions under the Criminal Law Amendment Act. If there be no such provision then in every case the argument will be based on implied inclusion in the absence of express exclusion.

Sir Abdur Rahim: Would it be a good argument?

The Honourable Sir Brojendra Mitter: I am only suggesting that that argument will be advanced in every case. Since we are legislating why not make it clear?

Sir Cowasji Jehangir: Can you legislate for every bad argument?

The Honourable Sir Brojendra Mitter: We cannot. The skill of the advocate may skirt round an enactment of Parliament but we can legislate against such arguments as we can anticipate. We are anticipating the argument that the Regulation prisoners are outside the pale of the High Court, but the Legislature has nowhere said that the Criminal Law Amendment prisoners are outside the pale in the same way as the Regulation prisoners are; therefore the High Court can intervene.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): No newspapers are allowed to be read in the House. (An Honourable Member was found reading a newspaper in the House.)

The Honourable Sir Brojendra Mitter: Sir Abdur Rahim said that it would be a bad argument. If it be a bad argument, then why not make provision against futile applications which will mean loss of time, and loss of money without any gain whatsoever. Since we can anticipate that point, why not provide for it? My defence of clause 4 is this, that clause 4, in the first place, places a detenu in the same position as a State prisoner under the Regulations. Secondly, clause 4 is necessary in order to avoid a futile argument that Criminal Law Amendment prisoners can avail themselves, of 491, whereas the State prisoners are debarred from availing themselves of 491. In order to get rid of that ambiguity, to prevent futile applications being made, we want clause 4 to make the position perfectly clear.

Sir Cowasji Jehangir: May I ask the Honourable Member for a little advice? Is there not a difference between detaining a man under an Ordinance and detaining a man under an Act of the Legislature? I can quite understand your preventing interference from the High Court if you are detaining a man under the Ordinance, but if you are detaining a man under a statute, surely you do not want to deprive that man of the right of appealing to the High Court to see that the provisions of the statute have been legally carried out?

The Honourable Sir Brojendra Mitter: There is no question of Ordinance here. The detention is under the Bengal Act, not under any Ordinance. We are placing detenus under the Bengal Criminal Law Amendment Act in the same position as prisoners under a State Regulation. That is all.

Sir Abdur Rahim: Is there not a difference? For intance, the question may arise whether the procedure laid down in this Act has been complied with. Supposing the procedure has not been complied with, I do not think the Honourable the Law Member will contend that still the High Court cannot interfere. He does not contend that.

The Honourable Sir Brojendra Mitter: All I say is this, that if the detention is illegal, the High Court can interfere. If the detention be not illegal, then the High Court cannot interfere. That point was made by Sir Hari Singh Gour this morning. There was so much noise that probably Honourable Members did not pay attention to his wise words. Sir Hari Singh Gour said this, that the language of this clause is this, "any person arrested, committed to or detained in custody, etc." It does not say a person "purported to have been arrested, committed to, or detained in custody". The word "purported" is not there. Therefore the arrest, commitment to custody or detention in custody must be under the local Act or this Act, in order to oust the jurisdiction of the High Court.

Sir Abdur Rahim: Supposing the procedure laid down by the Act has been disregarded?

The Honourable Sir Brojendra Mitter: The test is this, whether the detention is legal or it is illegal. I cannot answer hypothetical questions. If a particular specific question were put to me, I could answer that. My test is this, if the detention is legal, never mind whether it is under the local Act or under this Act, then the High Court cannot interfere.

Sir Cowasji Jehangir: Who is to decide whether it is legal or not?

The Honourable Sir Brojendra Mitter: That will be decided by the High Court when an application is made. Suppose a man is purported to be detained under Regulation III of 1818, an application can still be made to the High Court to this effect that the proper warrant was not issued. He may say this; that the arrest and detention may purport to have been under Regulation III but it is not so in fact. There was no warrant signed by Secretary to the Government of India. Supposing he said that, in his application to the High Court. The High Court will then proceed to inquire whether the detention is legal or illegal. If the High Court comes to the conclusion that there was no proper warrant in the case, then, the High Court will say that the detention is illegal. Whether we enact clause 4 or do not enact clause 4, no one can prevent Sir Hari Singh Gour going to the Calcutta High Court and making an application on behalf of anybody in custody. Then the High Court will have to say whether the detention is legal or illegal. If there was a proper warrant or if a particular section of the Act empowered the Local Government to effect the arrest or detain the person, the High Court will say, "We have no jurisdiction". Sir, I repeat it for the last time, the test is this, whether the detention is legal or illegal. In the case of illegal detention no one can prevent interference

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by the High Court. Even in the case of legal detention, no one can prevent a man going to the High Court for testing whether the detention is legal or illegal.

The next point to which I come is this. Sir Hari Singh Gour's last argument was that clause 4 is ambiguous and that it must have been copied from some Ordinance or other. (At this stage, Mr. T. N. Ramakrishna Reddi rose to his feet.) Sir, I do not give way; I have given way frequently enough.

Mr. T. N. Ramakrishna Reddi (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): On a point of order, Sir. My Honourable friend says that he agrees with the opinion of the Honourable the Advocate General, Madras . . . . . .

Mr. President: Order, order. How is that a point of order?

The Honourable Sir Brojendra Mitter: Sir, my Honourable friend, Sir Hari Singh Gour's last argument was that clause 4 is ambiguous. What is the ambiguity about clause 4? It is taken not from any obsolete Ordinance, it is not taken from any imaginary source, but it is taken from sub-clause (3), section 491. It is only put in different language. That is all.

Sir Hari Singh Gour: I have said that.

The Honourable Sir Brojendra Mitter: Very well, there is no ambiguity about it. We are deliberately taking away the power of the High Court. There is no question about it. There is no concealment of that fact. The needs of Bengal are that certain persons should be detained without trial—and why without trial?—Well, the Bengal Legislature has given an answer to that. I may mention only two factors. One is that a trial is undesirable in order to protect witnesses from being assassinated. The second is this, that if these people are brought to trial, in that case the methods employed by the Government in fighting the terrorist movement will have to be disclosed in court in cross-examination, which, in the existing circumstances, is not desirable. Detention without trial is an unfortunate necessity at the present moment in Bengal. I do not want to argue that point at all, because that is a matter on which the Bengal Legislative Council has already declared. Sir, if detention without trial be an unfortunate necessity, it follows that the jurisdiction of the High Court should also be taken away, as otherwise the exercise of the jurisdiction might involve the disclosure of,—the sources of information, the methods employed to fight the terrorist movement, and so on, which disclosure is undesirable in the interests of the State. That being so, ...

Sir Cowasji Jehangir: I rise to a point of order. Is this relevant to the debate—the justification of "arrests without trial", "detentions without trial"?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Has that point of order any reference to the remarks which the Honourable the Law Member made at the commencement of his speech? The Honourable Member is quite in order.

The Honourable Sir Brojendra Mitter: Sir, what I submit is this, that it is a corollary to the policy of detention without trial that the power of the High Court under section 491 should be taken away.—That is the deliberate policy of the measure which is under consideration.

Now I come to the next point—that of hardship involved in the transfer. Sir, that is not a matter of law, it is a matter of administration. I desire to draw the attention of the House to section 11 of the Bengal Act:

"The Local Government shall by order in writing appoint such persons as it thinks fit to constitute visiting committees for the purposes of this Act and shall by rules prescribe the functions which these committees shall exercise."

Then clause 12 provides for allowances to persons under restraint and their dependants. Now, these are matters of administration, and by means of rules, as my Honourable friend, Sir Hari Singh Gour, has pointed out, you can mitigate hardship as much as is possible in the circumstances. I should have liked Honourable Members to suggest what sort of treatment they would like to be meted out to persons who are to be detained outside Bengal either with regard to their food or their association and so on and these suggestions, I have no doubt, would be carefully considered by the Government of India. I can well understand the suggestion being made, that the detenus should have such food as they are accustomed to, or, that provision should be made for Bengali cooks and things of that sort. Those are matters which can be adjusted by administrative orders; they are not matters for legislation here. My Honourable friend, Sir Hari Singh Gour, pointed out this morning, that the existing rules were quite liberal. A copy was circulated in the Select Committee; and my own impression was that those Members who approved of this Bill and who advised this House to pass this Bill without modification were satisfied that the existing rules were liberal. It may be said that those rules are meant for detention in Bengal; I am not unmindful of that fact, and it may be that these rules would require some modification when the detenus are transferred from Bengal to some other province.

Mr. T. N. Ramakrishna Reddi: Can we have a copy of those rules?

Mr. S. C. Mitra: They are confidential; they are not to be given to others.

The Honourable Sir Brojendra Mitter: My Honourable colleague, the Home Member, will deal with that when it comes to his turn to speak. Sir, this is not a legal question, in which I am primarily interested. All I am suggesting is that if practical suggestions be made to ameliorate the condition of those people who are being detained without trial, the suggestions will receive sympathetic consideration. Sir, we have to face realities. The Bengal Government have thought it necessary to detain a certain number of persons without trial. The Bengal Legislative Council have passed that law. We cannot alter that; but what we can do is, to make the condition of these detenus as little burdensome and as much tolerable as possible in the circumstances, and that can be easily done by administrative orders. Therefore, that is not a matter of principle to which we need devote much time and discussion.

Mr. S. C. Mitra: But that means life and death to these detenus.

The Honourable Sir Brojendra Mitter: I fully realize the gloominess of the picture which my Honourable friend, Mr. Mitra, drew yesterday. That really makes a man think that when you are taking these people out of their own province, you ought to do everything possible to mitigate their hardship. (Hear, hear.) If any Honourable Member is able to make practical suggestions as to what ought to be done, I am sure the Government of India will not ignore them. Sir, with regard to the visiting committee, I hope my Honourable friend, Diwan Bahadur Harbilas Sarda, who comes from Ajmer will be a member of it. He will go and see these detenus, and if he makes reasonable suggestions as regards food or other matters, I am sure my Honourable colleague, the Home Member, will treat them with sympathy. Sir, I have nothing further to add with regard to the matters which are now under consideration.

Sir Hari Singh Gour: What about the life of the Bill?

The Honourable Sir Brojendra Mitter: I thank the Honourable Member for reminding me of this. The Honourable Sir Hari Singh Gour suggested, but did not say so in so many words, because, as a lawyer he could not say so, that an Act extending the existing Bengal Act of 1930 would automatically attract the measure which we are now considering. If I understood him rightly, that was his suggestion. Sir, I do not agree. I would ask my Honourable friend to refer me to any section of the General Clauses Act which would have that effect. The only sections in the General Clauses Act which are relevant are, I suppose, sections 7, 8 and 24. None of these sections deals with extension of an Act. They deal with repeal and re-enactment. Now, if the Bengal Act be repealed and re-enacted in 1935, then the measure which we are now considering, if it passes into law, will not attach itself to that re-enacted measure. This measure is supplementary to the Act of 1930. It says:

"The power of the Local Government under sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930, to direct, etc., etc."

Therefore, what we are doing is supplementing the Bengal Act of 1930. If the Bengal Act of 1930 be repealed or exhausts itself by efflux of time and be re-enacted in the same terms, then my submission is that this measure which we are considering now will not attach itself to that re-enacted measure, because, this Bill says, in so many words, that it is supplementary to the Act of 1930 and it is not supplementary to any Act which may be re-enacted in 1935. There is no section in the General Clauses Act or in any other law that I know of which automatically attracts a supplementary measure to an extended measure.

Sir Hari Singh Gour: That was not the point I made. I admit all that the Honourable the Law Member has said. My point is that if it is only extended to a further period and not repealed or re-enacted.

The Honourable Sir Brojendra Mitter: My answer to that is that even to an extended Act this measure will not be attracted because this measure in express terms is supplementary to the Bengal Act as it now stands and it cannot be supplementary to anything which may be different from the present Act. The Bengal Act has a five years' life. Therefore, the supplementary Act cannot in any circumstances survive the five years of the Bengal

Act or be extended beyond the five years without further legislation. As soon as the Bengal Act falls to the ground by efflux of time or by repeal, the supplementary Act also falls along with it.

Mr. Jehangir K. Munshi (Burma: Non-European): Mr. President, in these days of undisguised British frightfulness in India, we have to be thankful for small mercies; and the House has to be thankful that it has been given an opportunity of discussing this measure. But having been given this opportunity, what has the House done so far? I recall, Sir, the year 1928 when the Public Safety Bill was introduced in the Assembly; and I feel sad when I contrast the attitude of the Opposition today with the attitude of the Opposition in those days, when a measure of this type which strikes at the fundamental rights of a British subject was discussed in this House.

The most effective answer to any attempt on the part of my Honourable friend Sir Cowasji Jehangir and other Members, who have deluded themselves into the belief that they are accepting no responsibility except for the provisions of this Bill—and this Bill alone, has been given by my Honourable friend Sir Brojendra Mitter in a nutshell. The Honourable the Law Member said, "if you can swallow the principle of detention without trial, why protest against any of the clauses of the present Bill?". To start with, I am in entire agreement with him on this point; but is this House prepared to accept the principle of detention without trial? If we are a party to this measure, according to Sir Brojendra Mitter's argument followed to its logical sequence, we shall be giving our sanction to the principle of detention without trial. If we are not approving the Bengal Criminal Law Amendment Act, then we have no right to add anything on the Statute-book in furtherance of that Act. (Hear, hear.)

The very first point which this House has got to consider is this. If the provisions of the Bengal Criminal Law Amendment Act were to be placed before this House today, what would be the attitude of the House towards those provisions? My Honourable friend Sir Cowasji Jehangir said yesterday that this House has no responsibility for the provisions of the Bengal Act. I ask him now, if the provisions of the Bengal Act were placed before the House today, would he support them? I am confident that he would not. I am equally confident that the Opposition, and more particularly the Nationalist and the Independent Benches, could not possibly lend their support to the Bengal Act if it were placed before the House today. If they could not lend their support to the Bengal Act, how can they lend their support to this Bill which is frankly in furtherance of the object underlying the Bengal Act? We have heard a great deal about this House not being given an opportunity to discuss various provisions which have been promulgated by way of Ordinances. But when we do get an opportunity now, what attitude is this House going to take up? If we pass this measure, what right have we to complain that we have not been given an opportunity to discuss the Ordinances; because if we were given an opportunity to discuss the Ordinances, would the verdict of the House be different to what it would be on this measure today? I do contend, Sir, that every principle of the Bengal Criminal Law Amendment Act is pernicious from end to end, and we cannot possibly be a party to any part of that Act or to this Bill which is frankly intended to supplement the Bengal Act and to help the Bengal Government which has taken powers under that Act. I therefore urge that the first duty of the elected

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Members of this House is to resist these constant inroads on the liberty of the subject and to throw out this Bill at this stage. (Applause.)

I cannot appreciate the argument advanced by my Honourable friend Sir Cowasji Jehangir that the House has accepted the principle of the Bill, and therefore even if the House realises at this late stage that it has committed a grave error, it cannot rectify it. Is Sir Cowasji Jehangir or any other Member in the House prepared to assert that because an error has been committed by accepting the principle of the Bill, this House is bound to persevere in it?

Sir Cowasji Jehangir: Had the Honourable Member been in this House and returned from Burma a little earlier, he would have been a little wiser than he is today.

Mr. Jehangir K. Munshi: My Honourable friend Sir Cowasji Jehangir is trying to evade the answer to my question. I would again put this simple question to him and would like to have a clear answer. Is it his position that even if this House has made a mistake in accepting the principle of the Bill, this House must persevere in the mistake and perpetuate it? I wait for a reply.

Sir Cowasji Jehangir: Certainly not. The House has always the privilege and the right to change its mind at any moment, but the Honourable Member, who has been deliberately absent from this Honourable House, has no right to criticise it on the third reading.

Mr. Jehangir K. Munshi: I am thankful to my Honourable friend, Sir Cowasji Jehangir, that he has given his opinion now in unequivocal language. Therefore, I do now tell every Member of the House, on the authority of my Honourable friend Sir Cowasji Jehangir (laughter and cheers) that whether he sat on the Select Committee or not, and whether he was present in this House or not when this Bill was referred to the Select Committee, if he now feels that the House has committed an error, whether it is a grave error or a slight error, in allowing this Bill to go to Select Committee, let him now rectify that error. We cannot perpetuate an error of this kind and thus do grave injustice to Bengal. (Applause.)

Assuming for the moment that this House is not going to refuse consideration of this Bill but that it is going to consider the Bill later on clause by clause—I hope this will not happen—but on that assumption I shall now try and deal with the object underlying clause 2 of the Bill. In this connection I may mention that in March, 1926, I moved in the Burma Legislative Council, in the course of the discussion of the Budget Demands for Grants that "the Demand under the head, jails and convict settlements, be reduced by Rs. 100" and to quote from my own speech in the Burma Legislative Council, "The object of the motion was to condemn the cruel and pernicious system of exiling political prisoners and political detenus from India and incarcerating them in Burma". Today, we are faced with the same problem. Instead of removing them from Bengal to Burma, the Government of India and the Government of Bengal, as they are at present advised, intend to exile them to Ajmer. But, I must impress on the House that what we heard from the front Treasury Benches is an expression of intention. A man's intention can change, and so can a

Government's intention change; and instead of the prisoners being removed from Bengal to Ajmer they can be removed elsewhere, if powers are taken under this Bill. My Honourable friend Sir Cowasji Jehangir expressed grave concern yesterday as to the conditions to which these unfortunate persons might be subjected, if they are removed from Bengal; and he tried to console his conscience by saying that if our Honourable friend Sir James Crerar were to give an assurance that they would receive the same treatment, and that they would have created for them, in whatever place they may be confined, the same conditions as prevail in Bengal, then Sir Cowasji Jehangir himself would see no objection to clause 2. Now, Sir, let us examine the provisions of clause 2 in the light of past experience. When I made that motion in the Burma Legislative Council six years ago, my Honourable friend Mr. S. C. Mitra was languishing in a jail in Burma. With him were Mr. Subash Chander Bose and about half a dozen other political detenus. Of course they were all taken away without a trial and incarcerated in Burma for a considerable period. None of them knew, I am afraid my Honourable friend Mr. Mitra even now does not know, for what offence he was taken away to Burma and kept there. Let us now examine the attitude of the Government of Bengal at that time towards these political detenus. Let the House remember that these unfortunate men were taken away without a trial and kept in Burma for a long period. These unfortunate men, who had to spend a long time in Burma in imprisonment, made certain demands. Those demands were legitimate demands, they were reasonable demands; but the Government of Bengal does not think in the same way as my Honourable friend Sir Cowasji Jehangir thinks; it thought quite differently. The result was that my Honourable friend Mr. S. C. Mitra and others decided to go on hunger strike. If I remember rightly, they were on hunger strike when my motion was moved in the Burma Legislative Council and carried in that Council. As a result of this, the hands of the Government of Burma were strengthened; and I must pay a tribute to the Government of Burma that they displayed a very humane attitude towards the political detenus (applause) and the obstruction came from the Government of Bengal.

Mr. S. C. Mitra: Quite correct.

Mr. Jehangir K. Munshi: I will give the House a slight illustration. These unfortunate men, imprisoned without a trial, nobody knows for what offence, wanted to have an exercise, a little harmless exercise. They wanted to play ping-pong. They asked for two ping-pong balls. (Laughter.) To multi-millionaires like my Honourable friends Sir Cowasji Jehangir and Mr. H. P. Mody the cost of two ping-pong balls may be negligible, but the Government of Bengal took a different view. (Laughter.) I am not an authority on ping-pong; but I understand my Honourable friend Mr. Arthur Moore is; and he will probably be able to give the House the precise cost of two ping-pong balls. But whatever that may be, with a view to decide whether these very dangerous men should be allowed these most dangerous weapons in the shape of two ping-pong balls, considerable correspondence, I am informed, passed between the Government of Bengal and the Government of Burma, and a very high-placed police officer—I am told it was the Deputy Inspector General of Police, Bengal—came all the way from Bengal to Burma, to decide whether these unfortunate men, imprisoned without a trial should be provided with two ping-pong balls

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and whether they should be allowed to indulge in this dangerous pastime (Laughter and Cheers).

I am glad my Honourable friend, Sir Cowasji Jehangir, is laughing. Amusing as Sir Cowasji Jehangir may find it, I do hope that he will also give serious consideration to this aspect of the question. What is going to happen to these political detenus when they are taken away from Bengal and kept under the custody of another Government, and that other Government has got to face hunger strikes, and that other Government has got to take all the odium and unpopularity, and that other Government cannot afford to tell the detenus "We are prepared to concede your reasonable demands but the Government of Bengal will not agree". They can only say, "It cannot be done".

My Honourable friend, Mr. S. C. Mitra, and Mr. Subhash Chander Bose and others who were then in a Burma jail asked for certain facilities for worship. Of course that also was a very serious matter from the Bengal Government's point of view. Is it right, argued the Government of Bengal, that a man who has been imprisoned without trial should be allowed to worship God? On this question also, I am told, there was voluminous correspondence, visits paid by highly paid officials from Bengal to Burma, and ultimately the august Government of Bengal conceded these human beings the right to worship God according to their own religion in their own way. It was a great concession. The argument that the Government of Bengal constantly adduced was that it was the Government of Bengal who had to pay for the upkeep of these prisoners, and therefore it was the Government of Bengal who had the right to decide in what way the detenus should live, and it was the Government of Bengal who would decide to what discipline the detenus should be subjected. Now, Sir, in view of this past experience, I, for one, would not trust any power of this kind to the Government of Bengal. (Applause.) My Honourable friend, Sir Cowasji Jehangir, asked for an assurance, but who can give an assurance now which will have a binding effect on the Government of Bengal? I hope that my Honourable friend, Sir Cowasji Jehangir, with his keen conscience will satisfy himself that what I have related here will not be perpetrated again before he gives his support to any provision of this Bill.

Now, Sir, coming to clause 4, this clause has caused a great deal of concern even to the Independent Party. It naturally would. But my Honourable friend, Sir Brojendra Lall Mitter, in his brilliant way has dealt with it. As I understood it, his argument comes to this, that there may be occasions on which clause 4 as it stands will be held to be *ultra vires* of the inherent powers of a High Court. Being *ultra vires* of the inherent power of a High Court, it will naturally be redundant. So, Sir B. L. Mitter tells the Opposition, why worry about something which is redundant and *ultra vires* and which any Judge of a High Court will hold to be *ultra vires* and brush aside? But, if that is so, why keep it in the Bill at all? Either the High Court will have the power to interfere or will not have the power to interfere. If in spite of clause 4, the High Court will have power to interfere, clause 4 should go now. Why should we enact a farce? If by reason of clause 4 the High Court is deprived of the power of interference, then that is a clause to which this House, even as at present constituted, will, I hope, never be a party. (Applause.)

Sir Abdur Rahim: Sir, we are not concerned at present in discussing the merits of the Bengal Act, and I think the debate has been prolonged enough to justify us now in confining ourselves to the very short points that arise. First of all I wish to take up the question of law which has been dealt with by the Honourable the Law Member, that is to say, clause 4 of the Bill. Where is the necessity for enacting that the application of section 491 should be barred out? As I understood the Law Member, the reason he gave was that arguments might be raised in court that the High Court can ordinarily interfere in the case of men detained under the Bengal Act under discussion. It is to clear up any doubts or ambiguities on that point that it has been found necessary, according to him, to put this clause 4 in the Bill. Now, Sir, if you look at the Bill itself, what it says is this:

"The powers conferred by section 491 of the Code of Criminal Procedure shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act."

Therefore the argument seems to be that if any person has been illegally detained, then the High Court's powers of interference are not taken away. That, I understand, is the argument of the Honourable the Law Member, because clause 4 says "detained in custody under the local Act". Now I ask, if it was necessary at all to insert clause 4 to remove doubts as regards the scope of the powers of the High Court, then why not also make it clear that in case the procedure laid down in the Bengal Act as regards the detention of these persons,—what the local Government has got to do and what the Judges have got to do—has been disregarded that in those cases the High Court has the power to interfere and to order the release of the men from custody? Surely, Sir, if one is necessary so is the other; and I ask the Honourable the Law Member and the Honourable the Home Member to consider this as otherwise we shall be obliged to throw out clause 4 of the Bill. It is not really necessary. All sorts of arguments may be advanced but it is for the High Court to decide whether an argument is sound or not. If a particular argument would not be a sound argument, then why make any provision against it at all? That is the difficulty we are feeling. We think clause 4 is unnecessary and if it is unnecessary, as the Honourable the Law Member himself must recognise then why have it at all? If he finds it necessary to keep it there in order to remove any doubt then there ought to be a clause or proviso to the effect that in case the procedure laid down by the Legislature in the Bengal Act is not observed, then the High Court has the right and power to interfere.

The Honourable Sir Brojendra Mitter: Sir, may I answer the Honourable Member? Ordinarily the High Court has plenary powers of intervention. In so far as you expressly take away the power the High Court loses power to that extent, but the residuary power is always with the High Court. Therefore if a case does not come within the strict wording of clause 4, the High Court would still have the power.

Sir Abdur Rahim: Then why not make this clear? That is our position.

The Honourable Sir Brojendra Mitter: I should have thought it was clear enough.

Sir Abdur Rahim: Now take the Bengal Act. Section 9 of the Act says that within one month from the date of the order the material facts and circumstances in the possession of Government will be placed before the Judges and the Judges will have to pass an order. Supposing no such evidence or facts had been placed before them, and no such order has been passed. Surely the High Court ought to have the power to interfere, otherwise the whole thing is a farce. That is the Local Government can, without observing the procedure of the Act at all, detain any person in custody as it thinks fit, and the High Court can not interfere. It is admitted—I take it as an admission on the part of the Law Member—that the insertion of clause 4 in the Bill was not necessary. If however it be necessary, then I say that there ought to be a proviso as I have suggested, namely, that in case the procedure laid down in the Act has not been observed, the order of the Government shall be set aside and the High Court should be at liberty to order the release of the detenu.

Sir, the other question is regarding the proper treatment of the persons kept in custody. Government ought to remember all the time that these are not convicts; these are not criminals who have been found to be guilty after a proper trial. They have not had an opportunity of being tried in court apparently because the evidence available would not be sufficient to justify any court in convicting them. At the best they are mere suspects, and people may be suspected who are perfectly innocent. Therefore in their case it is essentially necessary that they should not be treated in the same way as persons convicted of crimes. They should not be put to any unnecessary hardships, and I think the Honourable the Home Member himself more than once in the course of the debate that there has been on this Bill assured the House that he would do all that was necessary in order to see that no unnecessary hardships were inflicted. I believe I am correct in stating this as the position taken up by the Honourable Member. If that is so, all that is needed is that we should have a proper assurance that what the Honourable Member has said will be carried out. There is a great deal of feeling on this side of the House that though assurances are given, it is not always that those assurances are translated into action by the subordinate executive authorities or even by the Local Government. I understand that rules have been already framed by the Local Government under this Act, and that they were shown to members of the Select Committee. But others have not had the advantage of seeing them, and I am told that they were marked as confidential. It does not seem clear to me why the rules enacted under an Act should be treated as confidential at all. We ought to have those rules before us and we ought to be satisfied that they are really proper rules. Ordinarily any rules framed under an Act are published in the gazette, so that the public may know not only what the enactment is but the rules which are part of that enactment. Any rules framed under an Act are part of the legislation itself and I do not think there is any justification for treating any such rules as confidential. If we see the rules that are framed, then in that case many of the difficulties that we are experiencing on this side of the House would be removed.

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Specific questions have been raised as regards the food of these detenus and also their general treatment—interviews and matters of that nature. Now, there ought to be no difficulty in directing by rules that the food which these detenus are accustomed to in their own province should be

supplied to them as far as possible. There ought to be no difficulty about that. The same as regards interviews. As regards interviews I quite recognise that it may not be possible to allow too many interviews, especially having regard to the distance from Bengal of the place where they will be incarcerated. But I am certain that many at any rate of these prisoners belong to rather poor families; and it would be inflicting very great hardship on those families if the Government did not make some special provision for payment of travelling allowances to some friends or relations of the detenus for say, two or three times a year. I do not think the cost would be too much: at any rate the rule ought to lay down that Government will provide all reasonable facilities to the relations of the detenus to visit them at proper intervals.

Then as regards general treatment, I should like to say one thing: I know some time ago a Jail Committee was appointed in order to introduce reform in the administration of jails a report was issued. It was a very large volume and contained very valuable and interesting suggestions in order to bring the jail administration in India into the line with modern ideas. I believe all Local Governments were asked to consider the proposals and considerable headway was made by the Local Governments in respect of the carrying out of those proposals. My friend, Mr. Mitra, cited some cases in which the old jail rules were certainly very much out of date, and the political prisoners and other prisoners of their status felt that the enforcement of some of those rules were of an extremely humiliating character. He mentioned especially the rule regarding saluting certain officials as "Sarkar Salam" and what he called the 'latrine parade'. I think the Honourable the Home Member and other occupants of the Treasury Benches will realise that in the case of these detenus especially, jail rules of this class can serve no good purpose at all: on the other hand it must result in a great deal of mischief if any humiliating rules are enforced. These political detenus after all are not convicts: they are not criminals and whatever offence they may be suspected of is of a political nature, and it cannot be desirable and it cannot be in the interests of good Government or in the interests of jail administration that they should be put to any unnecessary humiliation. I am perfectly sure the Honourable the Home Member will see the advisability—at least I hope so—of providing by rules under the Act that any rules of jail discipline which are unsuitable for political detenus should not be applied in their case. I think if the rules are so framed as to satisfy those conditions, the opposition that there is on this side of the House will be very much mitigated.

These are therefore the two points before the House: whether it is necessary to retain clause 4, and if so, whether a proviso should not be added to the effect suggested in one of the amendments; and the other is that the rules should definitely provide ensuring proper treatment as regards food and as regards discipline, and all that, of the political detenus. If the Government Benches are prepared to accept our views on these two points, I believe there will not be much opposition to the Bill.

Mr. R. S. Sarma (Nominated Non-Official): Mr. President, a thief after climbing up a cocoanut tree for the purpose of stealing a few cocoanuts, suddenly realised that the owner of the tree was coming and therefore started climbing down. He was challenged by the owner and

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asked "What are you doing?" He said "I went up to cut grass for my cow". The owner told him, "But grass does not grow on cocoanut tree". And the thief said, "That is why I came down". One is reminded of this story after the explanation we heard this morning from Sir Hari Singh Gour. Why did he go to Select Committee? For the purpose of improving the Bill so as to make it acceptable to the people of this country and acceptable to the Members of this House. If it is not so now, then why did he sign it? Because he says he could not do anything else as he was Chairman of the Committee and had to take an impartial view. Then why does he come down and oppose it now? Because he says he does not like the face of this Bill. It is something like the logic of the man who climbed the cocoanut tree. I wish that the Honourable gentleman had shown greater courage of conviction and not allowed himself to be bullied into an abject surrender by the rank and file of his party. I was myself present as a member of the Select Committee, and I exactly knew the working of the mind of Sir Hari Singh Gour. He himself said that the only principle involved in this Bill was to give power to the Bengal Government for the transfer of prisoners from Bengal to outside jails, and when certain amendments were pressed, as for instance, the question of travelling allowance and things like that, it was not Sir James Crerar but it was Sir Hari Singh Gour who pointed out . . . . . .

Mr. D. K. Lahiri Chaudhury (Bengal: Landholders): On a point of order, Sir. Is the Honourable Member entitled to discuss the proceedings of Select Committees?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): No, he is not.

Mr. R. S. Sarma: I am not discussing the proceedings of the Select Committee, but I find that many things that happened in the Select Committee have been said in this House. Anyhow, all I want to say is this, that Sir Hari Singh Gour himself felt that those amendments which were pressed could not form part and parcel of the Bill, and we accepted his suggestion as an expert lawyer. All he wanted was that the suggestion for improving the amenities of prisoners transferred to places outside Bengal should be embodied in some form or other, and Mr. Mitra and other friends agreed with him on the point. All that they said was that Bengal prisoners when transferred to other jails outside Bengal must have all the conditions prevalent in Bengal jails, and if those conditions were fulfilled, and if an assurance to that effect was forthcoming, they would be agreeable to this measure. I think even in the first stage of the debate on this Bill, two weeks back, the Honourable the Home Member said that, as far as possible, they would see to it that these prisoners are not subjected to hardships which in a new place they would be put to. Now if those conditions are fulfilled, and if an assurance of the kind that is asked for by my friend Sir Hari Singh and his friends is forthcoming, I do not see any reason why there should be any opposition to the Bill before the House. But with regard to the question of travelling allowance to relatives of detenus, to which Sir Abdur Rahim drew the attention of the House, I think, Sir, Honourable Members must take it, though it is an unpleasant thing to say it, that jail is after all a jail with all its hardships, and when a prisoner or detenu, or

whoever it is, goes to jail, he ought to know that he is going to jail and not to his father-in-law's house (Laughter); he cannot have all the amenities there. Then with regard to question of travelling allowance, there are two points which I want to place before the House. First is the question of cost, and I do not think the Bengal Government with its 2 crores deficit will be able to accept this suggestion, and secondly the very object of this particular Bill is, as far as possible, to discourage contact of the detenus with the outside world so that the terrorist movement might collapse, and one of the means by which this contact is established is by frequent interviews. Therefore, if Government do not accept this condition, that is to say, to pay the travelling allowances, they will be perfectly right.

Then, Sir, before I conclude, I should like to make a personal explanation with regard to a matter that was mentioned regarding myself at the last stage of the debate on this question. With reference to a particular statement that I made regarding the Leader of the Independent Party, he used a strong expression against me and said that what I stated was absolute falsehood. All that I said was, as will be clear from the official report of the Assembly debates, that there was a rumour that because his particular policy was not approved, he was asked to resign. The rumour might be true or not; but to say that what I said was absolute falsehood is quite unworthy of a leader of his position; but the way in which Sir Abdur Rahim himself stated the case proved that there was some truth in that. That reminds me of a story. Two friends were going along a road, one had something in his pocket, and they were waylaid. When they were questioned if they had anything with them, one fellow said: "I have nothing with me", while the other fellow fearing that something might happen to him, promptly took out what he had in his pocket. So this resignation is something like that. When the object of your policy in a particular portfolio is not approved by your fellow colleagues or by the head of the administration, it is not the unpleasant portion of it that you give up, but it is the office that you give up. Then, Sir, I have also to say this, that Sir Abdur Rahim held out a threat unworthy of a big leader, that if Nominated Members are allowed to say things which are in the confidence of Government, he would himself be obliged to come out with things that have actually happened . . . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Honourable Member is too long in his personal explanation.

Mr. R. S. Sarma: I do not want to say anything more, Sir.

The Assembly then adjourned for Lunch till Twenty Five Minutes Past Two of the Clock.

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

Mr. C. C. Biswas: It is perhaps natural that in a matter of this kind the discussion should be swayed to a large extent by sentiment. It is also perhaps natural that the discussion should have ranged over a much wider field than the immediate issue before the House. It is just as well that

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this should be so, because I wish my friends on the Treasury Benches to realise that in matters which involve the liberty of the subject, all sections of the House feel almost equally strongly. The Honourable the Law Member has stated that provisions like those which you find embodied in the Bengal Criminal Law Amendment Act or in the State Prisoners' Regulations are not liked by anybody, that they are abhorrent as much to the officials as to the non-officials. The only difference is this, that while the officials, professing their abhorrence for such measures do not hesitate to take action which appears to be somewhat inconsistent with their professions, the non-officials, on the other hand, not being oppressed with the sense of responsibility which weighs upon my friends on the other side, are in a position to take a more detached view of things, all the same a view which deserves much more consideration on that very account, and I claim that the attitude which non-official Members of the House take up deserves to be treated with the utmost sympathy by Members of the Government, if for no other reason than that the victims, or the would-be victims, of such measures are or will be persons belonging to our own kith and kin. We realise, all of us, the situation in which the Government find themselves at the present moment. We realise their embarrassments. We realise that the attempts which they have so far made have in many instances failed, and therefore it is that they are asking for more powers. We concede quite frankly that in asking for such powers they are acting from the best of motives. We are not impugning their *bona fides* at all. All the same, as representatives of the people, it is our duty to tell the Government what the people feel about such measures. It is our duty to warn them of the dangers that are inseparable from action such as they want to take. Recognising the difficulties of the situation, some of us may be prepared to concede drastic, arbitrary powers to the executive, but more than the existence of such powers, the danger comes from the way in which those powers are actually administered. That is a point which I desire to impress upon my friends on the other side,—that in applying the provisions of enactments like these they should try to temper justice with mercy, they should try to soften the rigours of such repressive measures as much as possible, they should try to adopt an attitude of humanity. Remember that the persons who are to be dealt with under this Act or under corresponding Regulations are persons who have not been placed before a court of law and found guilty. That makes a good deal of difference. If we were dealing with persons whose guilt had been established in a court of law after proper trial, one could understand, and one could also reconcile oneself to the fact, that they should be deprived of their liberties to a certain extent. After all, people must be prepared to take the consequences of their actions, and it is useless to expect that life in jail should be quite as pleasant as life at home. But, Sir, I submit that, when you are dealing with persons as regards whom it has yet to be established that they are guilty, you should certainly try to differentiate their cases from those of persons who have been found guilty after proper trial. Situations may arise, situations do arise, and I am prepared to concede that a situation has arisen, when the executive feel bound to take action upon mere suspicion. But such suspicion must be founded on reasonable grounds. Unfortunately, it is our experience that the sources of information on which the Government find themselves compelled to act are not always above reproach. If we

could be satisfied that Government were always well served by their agents, then possibly much of the objection to measures like these from the popular side would have been taken away. Unfortunately, that is not so. There have been numerous instances, both recently and in years gone by, when miscarriages of justice of the gravest character have been brought to light. We in Bengal yet remember that notorious case of the *Sindhubalas*. There were two *Sindhubalas* in Bankura. One of them was wanted. There were two of them with the same name. The police did not know what to do. They took *both* into custody, and then after several weeks, they found it necessary to discharge both of them! Well, Sir, I am reminded of a passage in a speech which was delivered by the late Sir Rash Bihari Ghosh, referring to measures of this description. I suppose he was referring to Regulation III of 1818, and the learned doctor pointed out that it recalled the simple rule which found favour in an ancient Scotch border town. The formality of a trial was not dispensed with, only that it took place after execution. Here in the case of the *Sindhubalas*, the inquiry followed the arrest, and then as a result of that inquiry both had to be discharged. So, I say there are those inherent dangers arising from the character of the agents whom Government have to rely upon. Therefore I say, proceed cautiously, and proceed, if you must, in such a way that the severity of the punishment may not be greater than it must be.

I am quite prepared to recognise the fact that so far as the present Bill is concerned, it is a supplementary piece of legislation. As I myself had occasion to point out when the Bill was being referred to a Select Committee, the main enactment was passed by the Bengal Legislative Council, when that Council re-enacted for a further period of five years the Act of 1925, and I may also inform Honourable Members to-day that only recently, last month, the Bengal Legislative Council passed an amending Act whereby some very important modifications were made in the Act of 1930. I am referring to this for the purpose of showing that that Council had on more than one occasion expressed its approval of this measure. Notwithstanding what my friend Mr. Munshi has said, it is not possible for us to overlook that fact altogether. Those who were primarily responsible did accept responsibility for a restrictive enactment of this kind. They did so at least on three occasions, first of all, in 1925 when they passed the Bengal Act of 1925; then, Sir, in 1930, when that measure was re-enacted, and lastly, in February this year when the whole policy underlying the Act was again opened for discussion and re-affirmed. There was strong opposition from non-official Benches no doubt, but still the amending Bill was carried by an overwhelming majority. That is a fact of vital importance which, as I have said, we cannot ignore altogether. That being so, I think the House will not be justified in throwing out this Bill at this stage, when it is invited to take it into consideration. It is the duty of the House to see that the Bill is licked into shape so as to make it as acceptable as possible to popular opinion. On abstract grounds, Sir, we can never reconcile ourselves to this principle of arrest or detention without trial. That is a fundamental objection, but although we might record our protest here, our protests are bound to be unavailing. We cannot by our vote touch in any way the Regulations which are there already. We cannot by our vote touch the Bengal Act which is on the Statute-book of the local Council. We can only voice our protest and our opinion. We can by our

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vote show what exactly we feel and think about measures of this kind, but it is not possible for us to remove these obnoxious Acts and Regulations from the Statute-book. Therefore, as practical men at the present moment when we are faced with a supplementary Bill like the one before us, I submit that we ought to try our very best to see that it does not go beyond the lengths to which it must go.

Sir, what are the principles of this measure? As I conceive them, they are two. One is about the transfer of detenus from Bengal to another province, and the other is the taking away of the right of *habeas corpus*. With your permission I propose to take the second point first, but in order that my friends might appreciate exactly how the matter stands it is necessary that they should be acquainted a little more fully with the details of the primary legislation, the Act of 1930, which was passed by the Bengal Council. Sir, the Bengal Criminal Law Amendment Act of 1930 contains two important operative sections, sections 2 and 4, and there is a difference between the two, and Honourable Members of this House should know what that difference is. If you turn to section 2, you find it provides this. I will place before you the amended section the section as it now stands, or will stand shortly after the amending Bill has received the assent of the Governor. It says this:

"Where, *in the opinion of the Local Government*, there are reasonable grounds for believing that any person—

(i) is a member of an association of which the objects and methods include the commission of any offence included in the first Schedule or the doing of any act with a view to interfere by violence or threat of violence, with the administration of justice; or

(ii) has been or is being instigated or controlled by a member of any such association with a view to the commission or any such offence or act; or

(iii) has done or is doing any act to assist the operations of any such association, the Local Government may, by order in writing, give all or any of the following directions, namely, that such person—

(*a*) shall notify his residence and any change of residence to such authority as may be specified in the order;

(*b*) shall report himself to the police in such manner and at such periods as may be so specified;

(*c*) shall conduct himself in such manner or abstain from such acts as may be so specified;

(*d*) shall reside or remain in any area so specified;

(*e*) shall not enter, reside in or remain in any area so specified,"

and then follows an important clause for my present purposes,

Section 2: "shall be committed to custody in Jail.. . . ."

and the section goes on that the Local Government may at any time add to, amend, vary or rescind any order made under this section:

"Provided that such order shall be reviewed by the Local Government at the end of one year from the date of making of the order, and shall not remain in force for more than one year unless upon such review the Local Government directs its continuance."

You will find, Sir, that there are six kinds of directions which the Local Government may make under this section, and one of these is in clause (*f*) which says that the Local Government may direct that the person

shall be committed to custody in jail. That is the only clause which authorises detention in jail *under this section*. The other directions are to notify residence, to report to the police and so on. So far as ***habeas corpus*** goes, Sir, we are not concerned with these other directions, but only with clause (*f*), in a case arising under this section. Then comes section 4:

"4. 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 reasonable suspicion exists that he is a person in respect of whom an order might lawfully be made under sub-section (1) of section 2."

This section also has been recently modified, but it is unnecessary for me to refer to that modification for my present purposes. What I wish to point out in connection with section 4 is this that whereas in section 2 it is provided that action shall be taken *only where in the opinion of the Local Government* there are reasonable grounds for believing that the person concerned has acted or is about to act in a certain manner, here under section 4 on the other hand there is no question of "the opinion of the Local Government" at all: all that is said is this that, "Any officer of Government authorised by general or special order may arrest anybody against whom a reasonable suspicion exists". The difference between the two is this. Suppose an application were made to the High Court in a case where an order had been made by the Local Government acting under section 2, directing that a certain person shall be committed to custody in jail; then, upon the hearing of that application, the moment the order was produced saying that the Local Government had come to the opinion and recorded the opinion that this man was acting in the manner indicated, the application would be ruled out at once; in other words, the High Court would not interfere, for the purpose of substituting its own judgement for that of the Local Government. The "opinion" of the Local Government is the condition precedent for taking action under this section. Once that opinion is recorded, that is conclusive for all purposes, and no court of law, not even the High Court, would be entitled to go behind that opinion for the purpose of investigating on its own account as to whether that opinion was or was not well founded. Suppose, however, a man is arrested under section 4; there power is given to arrest without warrant any person against whom a "reasonable suspicion" exists. In such a case, if the matter goes up to the High Court on an application for a writ of ***habeas corpus***, the High Court will certainly be entitled to go into the question upon the facts as to whether or not there was "reasonable suspicion". The opinion of the officer making the arrest would not be conclusive, and the High Court would be entitled to go behind that. Well, Sir, I can quite appreciate the difficulty of the Government in placing all the materials before the court in such a case. It may be that the officer making the arrest has some information about some person whose identity he cannot disclose; possibly, if he did that, it might place the person who gave that information in jeopardy, or it may be that if that information was disclosed, it might interfere with other inquiries which were then on foot. The premature disclosure of plans might avert action in many other cases, or, for various other reasons it may not be desirable or expedient or possible for the police or the Government to place all the facts showing why the person was arrested before the court; and therefore, in such a case it is possible to understand why the Government should be anxious to keep the matter out of court, because here the law does not provide

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that the opinion of the person making the arrest will be binding upon all concerned including a court of law. It is only fair on my part to point out that in a case coming under section 4, where a person is arrested, the arrest can be followed by detention only for a limited period; in other words, the officer makes the arrest and then after that, he reports the fact to the Local Government, and pending the orders of the Local Government upon his report, he commits that person to custody, and it is provided here that such custody shall not exceed a period of 15 days except under a special order of the Local Government, but in no case can the period of detention even under the orders of the Local Government exceed one month. It was one month under the Act of 1930 as it stood; since then, by the amending Bill it has been made two months. So under section 4 a person runs the risk of being kept in custody for a maximum period of two months. Then, Sir, there is the other provision—section 9—which my learned friend, Sir Abdur Rahim has referred to already, and it is necessary for my present purpose, as I am dealing with the question of *habeas corpus*, to draw attention to it once again. It says this:

> Within one month of the date of order by the Local Government under sub-section (1) of section 2, the Local Government shall place before two persons" (of certain qualifications) "the material facts and circumstances in its possession on which the order has been based or which are relevant to the inquiry," and so on; and then "the said judges shall consider the said material facts and circumstances and the allegations and answers and shall report to the Local Government whether or not in their opinion there is lawful and sufficient cause for the order."

Now what is the effect of taking away the right of the High Court under section 491 of the Criminal Procedure Code in respect of persons dealt with under this Act? Let us rather see what would be the position, if this power was not taken away. As I say, if the *habeas corpus* was not taken away, then, in a case coming under section 2, the only ground which could possibly be put forward for making such an application would be this, that the order which directs detention in custody does not show on the face of it that the Local Government were of opinion that the person was acting in the manner indicated, but that would be a very rare case. We can take it for granted that whenever an order is made under section 2, the Local Government would take good care to see that the order was drawn up in terms of that section, and the order would recite that the Local Government are satisfied that in their opinion the person has acted in the manner indicated. So, for practical purposes we need not contemplate any such cases, but it may be that after the arrest and the order of detention are made, the Local Government does not place the material before the Judges as required by section 9 within one month. It is apparent that in that case the position will be that although the arrest and detention were good and lawful to start with, the detention would cease to be good and lawful as soon as the month expired without the matter being placed before the Judges. In that case it should be open to the person concerned to come up to the High Court and get an order of acquittal on that very ground.

Let us see now what is the position regarding section 9. In a case under section 4,—and these will be practically the important cases touched by the *habeas corpus* clause,—it would be open to the man, even at the very outset, to come up to the High Court and challenge an inquiry as to

whether or not the grounds on which the arrest was made were "reasonable". Let us examine for a moment the clause in the Bill which purports to take away the right of *habeas corpus*, namely, clause 4. I am assuming for the present that the powers under section 491 of the Code of Criminal Procedure are co-extensive with the powers of issuing a writ of *habeas corpus*, but I may point out that there is high authority for holding that, apart from section 494, the High Courts enjoy certain other powers, powers which they have inherited from their predecessors or derived from the common law. The present Bill seeks to take away only the powers under section 491. If, apart from this section, the High Courts have certain powers, those powers will still remain with them, and we need not worry about that at all. Let us confine ourselves to section 491 only. Clause 4 provides that "The powers conferred by section 491 of the Code of Criminad Procedure, 1898, shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act". You will observe the collocation of these words—"arrested, committed to or detained in custody", which seems to suggest if the object was only to refer to cases coming under section 4 of the local Act, because section 4 of the local Act uses the word "arrested" in sub-section (1), then the word "committed" in sub-section (3) and the words "detained in custody" in the proviso to sub-section (3), but I think it will not be safe to hold that the language is not wide enough also to cover a case of detention under section 2 where you find the expression "committed to custody in jail" used in clause (*f*). My Honourable friend the Law Member has said that if a case arises in which the arrest or detention does not conform to the provisions of the Act, it will still be open to the person concerned to apply to the High Court for a writ of *habeas corpus*, and the High Court will be quite within its jurisdiction in entertaining and allowing such an application. In other words, if I have followed his contention aright, it means that notwithstanding clause 4—I am assuming that it will be embodied in the Act—the High Court's power to interfere in a case of illegal or improper detention will not be taken away. Sir, with all respect I do not share that view. Will that be so in a case under section 4? If that was the case, then there would be no point in making this provision. My Honourable friend assumes that the words "any person arrested, committed to or detained in custody" in clause 4 can only mean a person *lawfully* arrested, *lawfully* committed or *lawfully* detained in custody. But, Sir, to me it appears to be at least doubtful whether that view will be taken. The question is this. Does not this clause 4 as worded protect also an arrest or a committal or a detention which *purports to be made under this Act*? The question is whether or not the High Court will have jurisdiction to entertain an application for the purpose of considering whether the arrest or detention or committal is in accordance with the law or not? To say that if the detention is illegal, the High Court will still have the right to interfere, but that if the detention is legal, the High Court has not a right to interfere, I submit, is begging the question. I should like to know, which will be the authority to decide whether the arrest is illegal or legal? As a matter of fact, as all the reported cases under section 491 will show, when the party concerned comes up to the High Court and makes an application under that section, it does so on the allegation that the detention or the arrest is not legal. Where the High Court has come to the conclusion, after proper inquiry, that the arrest was legal, the Rule

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has been discharged. In other cases where they came to the conclusion that the arrest was illegal, they directed that the prisoner should be set at liberty. That is the position. What my Honourable friend the Law Member said was this. If the arrest was legal, then the High Court cannot interfere. But if the arrest was illegal, then the High Court can interfere. Sir, the point that I wish to put to him is this: Are you or are you not taking away the right to go up to the High Court for the purpose of obtaining a decision on the question as to whether or not the arrest was legal or not? That is the point. Clause 4 certainly leaves the matter not free from ambiguity. I will not put it higher than that.

Sir, I quite appreciate the other argument which my learned friend put forward, and that is that this clause has been put in here to bring the matter into line with what you find in sub-section (3) of section 491 already in the case of persons coming under Regulation III of 1818 or the other corresponding Regulations of Bombay and Madras. I can quite appreciate that. But on that point let me remind the House that, although section 491 now contains sub-section (3), it is there notwithstanding the repeated objections of the House. Sir, my Honourable friend Sir Hari Singh Gour is my authority and he tells me, that, on several occasions attempts were made on the floor of the House, and some of these attempts were successful, for the purpose of knocking this provision out of section 491. But over there sits the House of Elders, and thanks to our friends in the Council of State, it found its place again in the Statute-book. No doubt for the sake of symmetry clause 4 of the Bill ought to stand, but it will be misleading to suggest that this House is reconciled to sub-section (3) of section 491 itself. I can quite understand that if you are going to take away the right of *habeas corpus* from the persons who are dealt with under the State Prisoners Regulations, there is no reason why you should accord a preferential treatment to persons who are dealt with under the Bengal Act. I can appreciate a line of argument of that kind. But we say, both are equally obnoxious. Either clause 4 of the Bill is intended to be operative, or it is not. If it is operative, then it does or it ought to successfully and effectively take away the right of *habeas corpus*. If not, then the best course would be to remove that clause altogether, and having done it now, to follow it up by bringing in an amending Bill for the purpose of getting rid of sub-section 3 of section 491. It is elementary law, it is elementary justice that where a subject has been deprived of his liberty, he shall not be deprived of the right to show that his liberty has been unlawfully taken away from him. There must be a remedy to every wrong. Are we to understand that there shall be no remedy against an executive wrong, because such wrongs are perpetrated in the name of law and order? Sir, I quite appreciate that no suspicion or distrust of the High Courts is involved. Nothing of the kind. But I do say that these provisions betray an overanxiety on the part of the executive to shield all their actions from the light of day. My Honourable friend the Law Member has given some explanation of the existence of this clause 4. May I remind him and remind other Members of this House that the explanation he has now put forward is not that which Government had put forward at an earlier stage of the Bill. This clause 4 reproduces the corresponding provision of the Supplementary Bill which had been introduced in 1925 and which afterwards was certified by the Governor General. You remember, Sir, that the first Act by the Bengal Council

dealing with these matters was passed in 1925. The Bengal Government in that year, after that Act was passed there, at once came up to the Government of India and suggested that they should bring in supplementary legislation. That was done. In that supplementary Bill which was introduced in this House in 1925, you had two exactly similar provisions, one giving authority to the Local Government to transfer prisoners from Bengal to some other province, another taking away the right of *habeas corpus*: it was not possible for the Bengal Legislature to take away a right that had been conferred by a statute of the Indian Legislature, *viz.*, the Criminal Procedure Code. Therefore the request was then made to the Government of India that they should initiate legislation in order to accomplish that object. That was done in 1925, and the same provisions are now reproduced in this Bill. It is really a replica of the previous Bill. What was the explanation which was put forward by the Honourable the Home Member on that occasion? I am reading to you a passage from the speech of Sir Alexander Muddiman, a passage which was referred to by my Honourable friend Sir James Crerar in his speech in this House on the 19th January, 1931. This is what Sir Alexander Muddiman said with reference to section 491:

"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."

He refers to the Code of Criminal Procedure:

"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."

Not exactly this House:

"The Legislature apparently at that time recognised, and rightly recognised, that these 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*."

Sir Alexander Muddiman makes no pretence about it, and does not say that if the detention is illegal, you can go to the High Court and get an order of acquittal. He makes no pretence of that kind:

"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 corresponds to section 4 of the present Bengal Criminal Law Amendment Act of 1930. This section authorises any officers to arrest on suspicion, and 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.

Sir Alexander Muddiman develops that point:

"An arrest is made under the section. I go straight off to the High Court and I engage my friend opposite—

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—probably he was referring to Sir Hari Singh Gour—

"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."

Sir Alexander Muddiman would not allow an application to the High Court even for the purpose of establishing that the arrest was illegal. To be logical and to be consistent, that is the proper attitude for the Honourable Member to take up. Otherwise there is no justification for this clause: unless you want effectively to shut off application to the High Court, why have this section at all? Then Sir Alexander Muddiman goes on:

"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 most important thing, you cannot have co-existing a power of revision by a judicial tribunal. In other words executive action must be wholly, completely and decisively free from judicial tribunals. That must be the position. And unless you take up that position, I say you cannot justify a provision like what you find in section 491, sub-section (*3*), or what you find in clause 4 of the Bill. So you will see, the interpretation which Government put forward in 1925 was of a different character, much different from what is put forward now. Sir, so far as I am concerned, I shall be glad to think that since 1925 Government have changed their views in the matter. Government now believe possibly what they did not then believe, or do not admit that they believe, that there may be cases where persons may be arrested without lawful reasons. If, at the instance of the present Law Member, Government have undergone that change in their angle of vision, that is a matter for sincere congratulation. Sir, I say, if that is the position, then let that position be clearly safeguarded by a proper amendment of this clause 4.

I am sorry, Sir, that my friends in the Select Committee had not addressed themselves to this aspect of the question with that care and thoroughness which we had a right to expect of them. I mean no disrespect to them. I have every sympathy with Sir Hari Singh Gour and his notions of constitutional propriety. All the same I do think that he might have given a lead to the other members of the Committee, a lead

born of his ripe experience, his sound knowledge of jurisprudence, and his well-known love for the liberty of the subject.

Sir, I find my friend Mr. Sitaramaraju has tabled an amendment to this clause. The least we can do is to accept that amendment. That at any rate will make it perfectly clear that this clause 4 is not intended to shut the door upon all applications to the High Court, even for the purpose of establishing that the arrest was an illegal arrest. This, Sir, is what I have got to say with regard to this question of *habeas corpus*.

Then I come to the other part of the Bill, that which deals with the removal of detenus from the province of their origin to another place. Sir, in this connection I will remind my Honourable friends here that years before when the late Sir Surendra Nath Banerjee was a Member of the Imperial Council, he brought forward a Resolution in connection with persons dealt with under the Regulations, and he urged that an Advisory Committee of the Legislature should be appointed for the purpose of inquiring into and reporting on all cases of detention under Regulation III and other kindred Regulations. He further suggested that it should be the duty of that Committee to make recommendations in every individual case regarding the health, allowance, the manner of detention and other matters relating to the persons arrested. Sir, that Resolution was accepted in substance by the then Government. I believe Sir William Vincent was then the Home Member. But I do not know what is the position today. As a matter of fact we know that for some time persons who were dealt with under these Regulations had their cases placed before a Committee of two Judges of the High Court. In Bengal I remember there was a Committee consisting of the late Mr. Justice Beachcroft and the late Sir Narayan Chandravarkar, and as a result of the investigations of that Committee, there were several cases where persons were set at liberty. I do not know, but I should like to have some information from my Honourable friends on the other side, whether that wholesome procedure is still followed. You see, Sir, in the Bengal Criminal Law Amendment Act there is section 9 which requires every case to be placed before two Judges. Of course the Judges are not High Court Judges there. Regulation III of Bengal and the corresponding Regulations of other provinces do not contain a similar provision. That is why the Resolution had been brought forward in the Council. But although that is not there, there is no reason why,—if it is a fact,—Government should have suspended a very wholesome practice which had been followed for some time. As a matter of fact recently there had been some questions either in this House or in the Bengal Council inquiring whether this procedure was being followed; and if my memory serves me right, the answer was neither "Yes" nor "No", but silence.

Mr. K. C. Neogy: The answer was in the negative.

Mr. C. C. Biswas: Well, Sir, whether it was a definite "No" or it was the still more eloquent silence of the Member in charge, the fact remains that this procedure is not being followed at present. I would very humbly appeal to the Members on the other side to consider the desirability of restoring that practice, because, after all, though public opinion will never be reconciled to a thing like suspension of *habeas corpus* or arrest or deportation without trial, still it may be made rather less unacceptable by having recourse to such proceedings as had been actually followed for some time.

[Mr. C. C. Biswas.]

Coming now, Sir, to clause 2 of the Bill, when this Bill was introduced, I was one of those who drew pointed attention to the discomforts and the inconveniences which persons removed from Bengal were bound to suffer in other provinces; and I referred in particular to questions of diet, questions of cooking, and so on. I am sorry to say that some of my friends simply laughed me away. There was a titter of laughter amongst non-official Benches on that occasion. Of course I was not indulging in sentiment; I was trying to put before the House some practical difficulties. I I am glad to find that my Honourable colleagues now realise that the objections I was raising at that stage were after all not puerile or ridiculous objections; and I am glad to acknowledge that on that occasion the Honourable the Home Member stated that he viewed the matter with the utmost sympathy. Speaking from his place on the 20th January, 1931, he said this:

"Nevertheless I do frankly recognise that the provisions of the Bill for removal to other provinces do involve hardships of a special character. I admit that. Our policy in regard to this matter, when under the Act of 1925 a certain number of such transfers had to take place, was to impress upon Local Governments that so far as possible the conditions of detention in Bengal should be reproduced. Questions of climate, questions of food and other questions which have been raised by Honourable Members are always carefully considered, and every attempt is made to secure that so far as conditions permit, there is uniformity; that there is, as I say, an endeavour to reproduce in the province of transfer as far as possible the conditions in Bengal, and if this Bill is passed and if occasion arises for the transfer of detenus to other provinces, I am prepared to give an engagement that that aspect of the question will be very carefully borne in mind and that the Local Government concerned will be informed of our views in the matter."

So far as these questions of comfort of these detenus are concerned, this clearly shows that the Honourable Member was very sympathetic in the matter. But he did not follow up his sympathy as far as he might have done. What he suggested was that he would communicate to the Local Government the views of the Government of India in this matter. I speak more in sorrow than in anger, when I say that that will not do. That will not meet the requirements of the situation. The matter ought not to be left to the discretion of the Local Governments. If the Government of India are prepared to bring it to the notice of the Local Governments, I do not see why they should not bring it to their notice in a way which will make their opinion effective. That is the point. I do not care whether you insert these provisions in the Bill itself or in the rules; but what I want is an assurance more than what has been given here, not merely that this will be communicated to the Government of Bengal, but that the Government of India will see to it that the Bengal Government does carry out those instructions with a view to minimise and mitigate the hardships so far as practicable. That is what I want. The Honourable Sir Brojendra Mitter has no doubt drawn our attention to section 11 of the Bengal Criminal Law Amendment Act, which provides for the appointment of visiting committees in Bengal, and has pointed out that under the proviso to clause 2 of this Bill the powers which the Local Government in Bengal may exercise under section 11 shall be exercised also by the Local Government in the province to which these prisoners may be transferred. I do not think, however, that this would be quite sufficient. As a matter of fact the visiting committees that you may appoint there would no doubt be acting with the best of intentions and trying to do their very best to soften the hardships of these prisoners; but it would be more their misfortune than

their fault that they would not be conversant with the habits and manners of Bengali prisoners. In spite of all their efforts and intentions, they might not be able to appreciate exactly what a Bengali should like to have. Might I therefore offer a suggestion to the Honourable the Home Member for his consideration? As the Honourable the Law Member said, there is already a set of rules for Bengal—rules which I understand are very liberal in their character. Those rules will require to be modified, if they are to be applied in some other province. The Bill, if passed into law, will no doubt give power to the Government to transfer a prisoner from Bengal to any province it likes, but for all practical purposes, as I understand it, we are now confined to a choice between Bengal and Ajmer-Merwara. If that be so, it should not be difficult for the Honourable the Home Member to take the Bengali Members on this side of the House into his confidence and lay before them those rules, and invite their suggestions in what respects those rules might be modified in their application to Ajmer-Merwara. I am quite sure, Members on this side of the House will be glad to help the Home Member in every possible way, and if in that way a practicable arrangement satisfactory to both parties can be arrived at, I do not see why Government should object. That is my suggestion. I do not insist that you should have something in the Bill itself to provide for these things. As a matter of fact, suppose you did, even then, if Government were so minded, they would simply treat them as a scrap of paper. Unless the Government are prepared to actually act in that way, no statutory provision in the Bill itself will make them to do it. Therefore the most important thing is to secure and obtain an assurance from Government that they will take steps to see that the Local Governments concerned do take action in the way suggested; and therefore I say that the rules which are already in force in Bengal might be placed before us and we might be given an opportunity to consider and suggest for the consideration of Government in what respects they might be modified so as to suit the altered conditions in the other provinces to which these men might be transferred.

I will not detain the House any longer. I have endeavoured to speak quite candidly and frankly, because I feel the occasion is one when we should speak without reservation. I say once again that we recognise the difficulties of Government, that we are quite willing and anxious to give them whatever help they want in order to meet a situation of unprecedented strain. All the same we also expect that Government on their side should accept our co-operation in regard to matters not very vital from their point of view, not very vital from the point of view of law and order, but very vital from the point of view of those men themselves, because they are matters which touch their health, their conditions of stay, their life itself. This is all, Sir, that I have got to say.

Major Nawab Ahmad Nawaz Khan: Sir, I rise to support the Bill as it is . . . . .

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): Who thought otherwise?

Major Nawab Ahmad Nawaz Khan: You will come to know very soon. Our eminent lawyer, gallant Knight, eloquent speaker, great patriot and

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Leader of the Opposition, Sir Hari Singh Gour, has supported the Bill and written in quite clear words:

"We do not propose that any amendment should be made in the Bill and we recommend that it be passed as introduced."

I say we should accept the Bill as it is because such an eminent lawyer has not found any defect in that in any way, except that today he very diplomatically and cleverly wanted to clear up clause 4, to which the Honourable the Law Member has given a proper and clear reply, satisfying all objections, criticisms and doubts that could arise legally in the minds of his party people, though I believe that a man of his experience knew very well that there was nothing legally wrong in clause 4. But the reply he received convinced all of us. In this question there are two aspects; one is the political and the other is the legal. So far as I can understand in the legal aspect there remains nothing more to be cleared up. As far as I know, the Law Member is himself a Bengali; he has full sympathy for his own province, not less sympathy than any young or old man who is now criticising the Bill with a patriotic view. He does not like that his countrymen should be treated severely or harshly; the Bill is not intended to loot or shoot the people there—the Bill to which the Law Member has subscribed. We all have come here not for a tug of war—one party on one side and the other party on the other—but we have gathered here for the good of the country and every Member will agree to that . . . .

Sardar Sant Singh: Then are you prepared ever to vote for the popular party?

Mr. President: Order, order.

Major Nawab Ahmad Nawaz Khan: I will vote with you very soon if I see that the popular party is on the side of justice. We have all come here to do good to the country, and the good of the country depends upon law and order. (*An Honourable Member*: "No, no.") Well, whether some Members smile or laugh, the fact remains that no country can make any progress without law and order. (*An Honourable Member*: "There is plenty of evidence of it in his own province today.") For the sake of law and order we should all try and sympathise with our fellow men. But law and order depend upon good laws of the country and their proper administration. Sometimes there may be mistakes committed in the proper administration of the laws, but for that the laws are not to be blamed, but it is the persons making such mistakes in administering the laws who should be held responsible. If some people find that a particular law has been wrongly administered by a particular officer, then the law is not to be blamed, but it is the officer who should be blamed, and you can certainly try and change the man; but you cannot blame the law. My Honourable friend, Sardar Sant Singh, in the course of his speech, referred yesterday to suppressive laws and progressive laws, but I must point out that suppressive laws are the real life of the progressive laws.

An Honourable Member: No, no.

Major Nawab Ahmad Nawaz Khan: Yes, I am telling you so quite frankly.

Mr. President: The Honourable Member should address the Chair.

Major Nawab Ahmad Nawaz Khan: Without suppressive laws, which are really the life of society, no Government can exist. It is only suppressive laws which can control crimes. If you give full liberty to people, and if you impose no control on crimes, then today in Delhi the people will deprive you of your motor cars, ladies will have no honour, there will be no safety for anybody, and society will not be worth living at all. It is not the progressive laws alone that have maintained society, but it is the suppressive laws. Even in religion you will find that it is the suppressive laws that make you control yourself. The first thing which you are ordered to do is to control vices and bad passions; that is the genesis of the suppressive laws. A doctor may give a stimulating medicines when a man is weak, but when he has fever, he will give him only a sedative and not a stimulant. It is not always that you want something like a stimulant for a man. I am not in favour of such laws which may give any person complete licence to shoot anybody he wants to. Therefore, we all have come here to give support to the Government to suppress the terrorist movement, anarchy and chaos in the country, and this fact cannot be disputed by any Member of the House.

The only objection now to the acceptance of this Bill is that some Bengali friends of mine have raised an objection that detenus should not be subjected to unnecessary hardships by their transfer to other provinces where they will not get the same kind of food and other things, but the Honourable the Law Member has clearly and very sympathetically explained this morning and he has also given an assurance that this object can be achieved by framing suitable rules and regulations, or by approaching the executive officers of the Government.

Now, Sir, there are two points in this, one is a question of principle and the other is the legal and political aspect. We all agree, so far as my knowledge goes, and what I have concluded from the numerous speeches we have heard on the subject, to the principle of the Bill, but the only objection of some of my Bengali friends is that they are afraid that perhaps under this Bill the detenus might be deprived of their ordinary comforts to which they are accustomed in Bengal if they are transferred from Bengal. But we must understand one thing. These jails are not His Majesty's charitable hostels where the detenus can have such comforts as we have in the Western Hostel. (*An Honourable Member*: "Then why do you invite them?") If these people are afraid of so-called torture, discomfort or other troubles in jails, then they should not resort to such things as would bring them under the purview of the criminal law, but the Honourable the Law Member has very sympathetically explained the whole position and has also given an assurance in the matter. So on the question of principle I do not see any difference of opinion among the Honourable Members here, except that there seems to be a lingering doubt in the minds of some that the detenus, will not be treated properly and their comforts, while under detention, will not receive sufficient attention. But since we have heard from these two eminent Indian gentlemen of repute, learning and vast experience, I mean the Honourable the Law Member and Sir Hari Singh Gour, that they will try their best to safeguard the interests

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of the detenus and to remove all the suspicions to which expression has been given by some Members on the other side, I think we ought to accept their opinions, and accept the Bill as it is.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I was not very much surprised to find the Honourable gentleman coming from the North-West Frontier Province getting up and blessing this measure, because, if any thing, this measure smacks of the extraordinary jurisprudence that prevails in his province, and it should be a matter of extreme gratification to him that the principles of law observed in the Frontier Province are going, after all, to be recognised as the sound principles of jurisprudence fit for acceptance and extension all over India.

Sir, when on the last occasion my Honourable friend, Mr. Biswas,—I am sorry he is not in his seat just now,—spoke, he altogether ignored the aspect with which he has dealt at such great length and with such great lucidity; it was he who stated that there is only one principle underlying this Bill, and that is with regard to the question of the transference of detenus from Bengal to Ajmer, and he said that, so far as the question of detention without trial was concerned, we need not trouble ourselves about it; it was the look out of the Bengal Council, and since they have taken the responsibility in that matter we might allow that to pass. He of all men has therefore no justification for criticising the Select Committee for not going into the matter in such detail as he himself has given with regard to the question of *habeas corpus;* for he, among other learned lawyers in this House, was certainly in a position to throw out suggestions, he has done today, rather too late, which could have been considered by the Select Committee. Now, Sir, my friend Mr. Biswas proceeded to state that certain facts have to be faced, and the principal fact, in his opinion, was that the principle of detention without trial has already been accepted by the Bengal Legislative Council. He further pointed out that in 1925 and 1930, the Bengal Legislative Council had passed a measure in which this particular principle was involved. Now, here is an inaccuracy which I should like in the first instance to point out, which my friend must have been inadvertently led into, and that is, that in the year 1925 the Bill was actually rejected by the Bengal Legislative Council; the Bengal Legislative Council refused permission to the Government to introduce that measure. The Bill was thereafter as a matter of fact certified and passed into law under the extraordinary provisions of the Government of India Act.

Now, I come to another point. My Honourable friend said, this principle having been accepted by the Bengal Legislative Council, we as practical men ought to see in what respects we could improve the present Bill, because we have no means of touching the local enactment at all. The real trouble is that the Legislatures of the present day contain too many practical men, and that is the very reason why they do not command the confidence of the country. The Bengal Legislature of 1925 did contain some practical men. I find that my Honourable friend Mr. Biswas has come back to his seat, and I would place before the House the opinion of a very practical man who was the only speaker in opposition to Government, and after whose speech the House divided and rejected the Bill. I am referring to no less a person than Sir Provash Chunder Mitter, the

prince of co-operators, who was at that moment waiting for his turn to get into the Government. Having been a Minister in the first Council, he was out of office for a short while, and then again he got into the Government, and it was during that interval—(*An Honourable Member*: "Interregnum.")—that the Honourable gentleman spoke as follows. And here, I should like to pause and remind the House that Sir Provash Chunder Mitter was a member of the Rowlatt Committee, and a party to the recommendations of that historic committee. This is what he says with reference to a measure involving the principle of detention without trial:

"As the only non-official Indian who was privileged to examine the inner workings of the revolutionary movement, I claim to have some right to speak on this subject. I may begin by saying that I believe that there is at the present moment a revolutionary movement. I believe also and I have always held the opinion, and I am still of the same mind—that, apart from other considerations, in the interest of the very important question of our national aspirations—this revolutionary movement must be checked; but I am sorry to say, Sir, that the Bill proposes not a physician's treatment of the malady but a quack's remedy. I think that if the Bill be certified or passed by the Legislative Council, it will not only fail in its object but will perhaps be, although it is farthest from the intentions of the members of the Government, a helpful measure towards the propagation of the revolutionary movement."

No greater condemnation of the measure has been made by any Member in this House. And, Sir, Sir Provash Chunder Mitter is a practical man!

My attitude is perfectly simple, I am not going to be any party to any measure of this kind. I am not interested in shifting the commas and semi-colons from here to there. I am not interested in the question as to whether the rules should be framed by the Local Government, or whether they should be approved by the Government of India, or whether an advisory committee should be constituted from a particular quarter, and things of that sort. My attitude is one of unadulterated opposition to this measure, because of the principle of detention of citizens without trial.

It has been stated by more Members than one, and particularly, by the Honourable the Law Member, that this is merely a supplementary measure, and we have nothing to do with that particular principle. I have a somewhat different conception of the position—at least I had that at one time—of the position and functions of this House. It is not the function of this House merely to provide corollaries to the *ipse dixits* of the provincial Councils. It is not in consonance with the dignity of this House to pass supplementary measures to buttress up wrongs, to buttress up a policy under which executive wrongs have long been perpetrated. If, therefore, I am going to be asked to take the responsibility for enacting a supplementary measure to buttress up a legislative enactment passed by any local Legislature, I must be in a position to go into the principles underlying that local legislation, and if I do not find myself in agreement with those principles, I am not going to vote on such a Bill with Government.

Several Honourable Members, including some non-official Members to my regret, have treated the question as if the whole matter in issue was what kind of curries are to be provided for these detenus. We have been discussing and discussing that very question, and the Honourable the Law Member has thrown out a very valuable suggestion. He says,

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we must provide a Bengali cook. Well, Sir, I do not think all these discussions need have taken place in a Legislature. They may very well have taken place at a meeting of experts in cookery. We are not here to prescribe the quantity of spices or of chillies that should be put into the curries of these young men. We have got a more exalted duty—at least, that is my conception of the functions and duties of the Legislature.

Mr. K. Ahmed: These questions were raised by your side.

Mr. K. C. Neogy: I have not spared my side either.

There is one little question that has been troubling me. The Honourable the Home Member, in placing before us the motion for reference of this measure to the Select Committee, among other things, stated that Government were dealing with very dangerous characters, and the more desperate among them must be removed from Bengal. There is another class of dangerous characters—those who have not been detained merely on suspicion, merely on the report of spies, but who have been convicted by courts of law, after proper trial, of terrorist crimes, people who have, for instance, been sentenced to long terms of imprisonment on account of their participation in what are called political dacoities or attempts at murder even. Does my Honourable friend the Home Member mean to suggest that, though these people under existing circumstances serve out their long terms of imprisonment in Bengal, there is no danger to be apprehended on account of their presence in the various Bengal jails, but people against whom there has been no specific charge, alone should be chosen for the purpose of being deported from Bengal? That is a point to which I should like to have an answer from the Honourable the Home Member. What is really behind this move—that is what I want to know. These men have had no opportunity of meeting the charge that is brought up against them. The so-called enquiry by two judges is no more and no less than a mere farce, as my Honourable friend Mr. S. C. Mitra has explained from his own personal experience. Now, these people are detained on the strength of reports of spies and informers. The Honourable Member knows as well as anybody in this House that the public at large never believe in the guilt of these persons, mainly because of the type of people who serve the Government as spies and informers. The general belief is that most of the so-called evidence, which nobody has ever any opportunity of looking at, is mostly concocted. My Honourable friend Mr. Biswas stated that he does not question the *bona fides* of the Government. But he says "What about the agents you employ, are they reliable?". Now, take the Government of Bengal itself. In connection with the Hijli incidents, is it not a fact that the report of the Inquiry Committee disproved in certain points the correctness of the official communiqué that was issued by the Government of Bengal in connection with the incidents that happened at Hijli; and is it not further a fact that the Commandant in charge of the detention camp plainly stated before the Inquiry Committee that the communiqué was based on nothing that had been supplied either by him or anybody else who had anything to do with the detention camp? Here is an instance of the concoction of an official communiqué by some fiction writers in the Bengal Secretariat.

The Honourable Sir James Crerar: I must point out to the Honourable Member that the actual facts of the case do not bear the construction he puts upon it. I understand his allegation to be that the Inquiry Committee found that certain statements published in the first communiqué which merely purported to give the information received up to that time, were inconsistent with the conclusions arrived at after a long and careful examination. This affords no ground for the suggestion that it was concocted.

Mr. K. C. Neogy: I would have been surprised if my Honourable friend had not interrupted me on that point, but the fact remains that the only people, who could possibly have supplied information to the Government of Bengal before that communiqué was issued, definitely stated that the communiqué was not based upon facts as they were represented to the Government of Bengal. The Honourable Member cannot get away from this fact. This is the kind of Local Government under which we have to live. Can my Honourable friend Mr. Biswas expect any improvement in the quality of the information supplied by the spies and informers against these young men on the strength of which their liberty is taken away for an indefinite period?

There is one other point. We have heard a good deal about assurances, undertakings and things like that. Now this Bill, it must be remembered, would have a life for 5 years. On all accounts we are going to have a change in the constitution before the life of this particular Bill expires, and if we are going to have provincial autonomy of the type desired, at least in the secrecy of their hearts, by the official Members opposite, if we get a constitution of that type, I do not know whether there will exist any room for any Legislature at the centre at all. I do not know whether my Honourable friend Mr. Heathcote is not already casting longing eyes upon this building, because its architecture, I am told, with very slight alteration would adapt it for being used as an oil tank. (Laughter.) Now, Sir, supposing there is a place for a Legislature at the centre in the scheme of provincial autonomy, as contemplated by the Government in the secrecy of their hearts, and supposing a question were put by my Honourable friend, Sir Cowasji Jehangir, if he does not become the Prime Minister of Bombay by that time, saying, "This is the undertaking given by the Government in the year 1932", whoever would take up the position now occupied by my Honourable friend the Home Member would get up and say, "You have provincial autonomy. How are you going to enforce these undertakings upon an autonomous provincial administration?". Similar has been the answer to many questions in the past, even though the provinces do not enjoy autonomy, and that I am sure is going to be the answer which the Honourable Sir James Crerar's successor will give in future when any questions are put on the subject from this side of the House. Therefore I say to the House, "Do not delude yourself into thinking that whatever assurances may be given from that side of the House are going to be carried out in practice".

Mr. C. C. Biswas: My friend need not worry about that—the new Indian De Valera might sweep aside all such laws altogether.

Mr. K. C. Neogy: I am thinking of a constitution in which there may or may not be room for a central Legislature. My Honourable friend's imagination has been running riot. I do not know what is going to happen to him if he expresses views like this. He might

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himself be detained under these Ordinances and sent away to Ajmer! It is a friendly warning that I give him not to give free vent to ideas like this. Times are rather dangerous. I say that the only honest policy, the only honourable course, for this House, is to reject this measure and not to be satisfied with tinkering here and there. That is my attitude and I am going to vote against the measure at every stage.

Mr. H. P. Mody: Along with a great many other Members of this House, I was greatly impressed with the performance of my Honourable friend, Sir Hari Singh Gour, when he drew up before us a pathetic picture of a very pugnacious Member being transformed into a regular dummy by the process of being translated to the Chair of a Select Committee. Now, Sir, I admire the statesmanlike restraint of my Honourable friend, and if he had merely stated that he was lost in contemplation or was slumbering peacefully while the supporters of the Bill were busy approving both the principle and the details, and appending their signatures, we would have listened to him with respect. But my Honourable friend chose to shy at us May's Parliamentary Practice, and I am constrained to observe that what he said was wholly irrelevant and misleading, and if future Chairmen of Select Committee were to be guided by May's Parliamentary Practice, as interpreted by my Honourable friend, Sir Hari Singh Gour, then we shall have to be very circumspect in our selection of Chairmen, and we might have to issue directions to them to put May's Parliamentary Practice into the waste paper basket

Now, Sir, a great deal has been said with regard to the attitude which the House should adopt towards this motion for the consideration of the Bill. On the question whether this House is or is not justified in rejecting the motion for consideration, if I was asked merely for my opinion on the general proposition, I would say both yes and no. The House would be justified in rejecting the motion for consideration if, when the motion for reference to a Select Committee was passed, the House had been taken unawares, or if the full circumstances of the case were not known to the House, or if the principles underlying the particular measure were not thoroughly understood, or if fresh materials had since been forthcoming. In such circumstances, in spite of the assent of the House to the principle of a measure, the House would be justified in rejecting, at a later stage, the motion for consideration. But after the very deliberate way in which the motion for reference to a Select Committee of this particular Bill was passed by the House, I do not think it can lie in the mouth of any Member who was present and took part in the proceedings, to say that he does not approve of the measure, and to try to reopen the whole discussion and to examine the principles of the Bill. I am afraid I have not been able to follow my friend, Mr. Neogy. I do not think this House by its vote is doing anything of the sort that he suggests, namely, giving its endorsement or approval to the principle of the Bengal Criminal Law Amendment Act, namely, that a person can be arrested without trial. That issue was never before the House; that issue, I do not think, can be before this House at any stage. All that we are asked to do is to follow up what the Bengal Legislative Council has deliberately done by a very large majority, and that is to enable the Local Government to transplant to other provinces those people whom in its executive

pleasure it wants to consign to detention without trial. (*Mr. K. C. Neogy*: "What about clause 4?") I am coming to that. Therefore, I do not think that any question of the principle of arrest without trial can arise at any stage, and I cannot see how any Honourable Member can now take up the position that he is not going to support the principle of the Bill. But it may conceivably be that when this side of the House accorded its approval to the reference to a Select Committee, it did so on certain understandings, and it now finds that they have not been carried out. I can imagine Honourable Members saying, "Yes, we gave our assent to the reference to Select Committee; we accepted the principle underlying the Bill; but there are certain very objectionable features in the Bill which the Select Committee has not remedied; and therefore we are going to vote against the Bill. That position, I admit, can certainly be taken up at any stage, and that brings me to the two points which are really relevant to the present discussion, and they are the points on which Members of the Independent Party have appended their minutes of dissent to the Select Committee's Report.

One important point is with regard to the question of the powers of the High Court to issue writs of *habeas corpus*. I am not going to follow those Honourable Members who have expounded that clause with a wealth of learning. All I shall say is that I was not satisfied with the explanation tendered by my Honourable friend, the Law Member. I had a suspicion that he was feeling just as uncomfortable when dealing with this question as my Honourable friend, Sir Hari Singh Gour, was when he was explaining away his position in the Select Committee. (Laughter.) The simple issue I want to place before the Honourable the Law Member is, supposing the Local Government had not carried out all the formalities imposed upon them before they arrested or detained a man in custody, would the High Court or any other authority have jurisdiction to interfere in the matter?

The Honourable Sir Brojendra Mitter: Yes.

Mr. H. P. Mody: And if they had no jurisdiction to interfere in the matter, then I ask whether it is the Government's position that it is deliberately intended that a person who is detained without trial should have absolutely no remedy against the highhandedness or autocracy of the Local Government. These points, I submit, have not been satisfactorily explained by my Honourable friend, the Law Member, and I hope the Honourable the Home Member will take the opportunity to make the position clearer. My submission is, where certain formalities have not been complied with, and a man is detained in custody without trial under the provisions of the Bengal Criminal Law Amendment Act, would the High Courts have jurisdiction to issue a writ of *habeas corpus* and to examine whether the Local Government had carried out all the formalities contemplated in the Act? For instance, if an officer has arrested a man and kept him in custody, and that officer has not been charged by the Local Government to effect the arrest either specifically or generally, would the High Court have power to interfere?

The Honourable Sir Brojendra Mitter: That would not be an arrest under the Act at all; if an unauthorised person were to make such an arrest, that would not be "an arrest under the Act".

Mr. H. P. Mody: Then under what Act?

The Honourable Sir Brojendra Mitter: Under no Act.

Mr. H. P. Mody: With great deference to the Honourable the Law Member, Sir, may say we have known a great many arrests effected by unauthorised people, and no redress has been forthcoming. Again, suppose a particular case is not brought under review as contemplated by the Bengal Act within one month,—supposing it is done after two months, what is the jurisdiction of the High Court? I am afraid my Honourable friend has not given answers such as can satisfy this side of the House.

There is one other point, and that is with regard to the treatment of these detenus when they are transferred to another province than the one in which they have passed their lives. The Honourable the Home Member, when the Bill was before this House for reference to a Select Committee, gave certain assurances about sympathetic treatment. Those who know the Honourable the Home Member are very willing to accept his assurances, and to concede that they were honestly meant, but the Honourable the Home Member is not master of the situation. He would be dealing with a Local Government which probably would not carry out in the letter and in the spirit any instructions that he might issue. The Local Government, to whose jurisdiction a detenu might be transferred, might also make light of the instructions of the Government of India. Therefore my suggestion to my Honourable friend would be, if he wishes this side of the House to accept his assurances in their entirety, to make them more definite than he has been able to make them yet. It is obvious that, in view of the lateness of the hour, this Bill cannot get through today, and my Honourable friend will have sufficient time to apply his mind to the problem. It will probably be another week before the Bill comes up again. In the meantime if my Honourable friend has drawn up a set of rules, and if he is prepared to show them to a few people who he thinks are interested in the question and are capable of taking a detached view of things, if he is able to place before them definite rules and regulations, then it may be that we may place a great deal more confidence in his assurance of sympathetic treatment than we are yet able to do. Therefore it comes to this, Sir, that unless my friends on the Government Benches are prepared to give definite assurances on two very vital points, namely, the right of the High Court to issue writs of *habeas corpus*, and also as to the exact treatment which would be accorded to such detenus as are sent outside their own province, I am afraid, in spite of the fact that we have accorded our assent to the principle of the Bill, we may be obliged to vote against it.

Several Honourable Members: The question may now be put.

Mr. President: I accept the closure.

The question is that the question be now put.

The motion was adopted.

The Honourable Sir James Crerar: Mr. President, I confess that I share to a large extent the feelings of surprise which have been expressed by more than one Honourable Member as to the course which the debate at this stage of the Bill has taken during the course of the last two days. If the Bill had been introduced for the first time in a House hitherto unapprised of the circumstances, ignorant of the facts or prepared to blind itself to the facts, if it had been introduced in circumstances of apparent

complete normality, if we had not behind it a long, I regret to say, and a very tragic and melancholy history, then I should not have been surprised at some of the arguments which were advanced yesterday by Honourable Members opposite. I owe it to my Honourable friend from Bombay, Sir Cowasji Jehangir, that at the stage when he spoke, something in the nature of a more lucid atmosphere and a wiser and wider perspective was restored to the debate. With regard to what fell from the Honourable gentleman on certain points relating to the treatment of detenus under this Bill if it becomes law, I propose to deal more specifically at a later stage of my speech with this and with the observations of a similar character which fell from the Leader of the Independent Party. But in spite of the very timely intervention of Sir Cowasji Jehangir, much of what has been said today has caused me additional surprise. I was surprised by what fell from the Honourable the Leader of the Nationalist Party. In fact, I think, on reflection and on re-perusal, he will probably be astonished at his speech himself. With that I do not propose at this stage to deal in detail. What I do wish to recall to the House is that this Bill has behind it not only the immediate circumstances which led to the necessity of its introduction here, but those which in the past have led to the earlier enactment of this and of the connected measure. The present Bill has been debated in the course of the last year more extensively, more minutely and in greater detail than, I think, any measure of a similar scope has ever been debated in this House at any time in its history. Very deliberately, after the most minute consideration, examination and comment, this House decided without a single dissentient voice to refer the Bill to a Select Committee.

(At this stage Mr. President vacated the Chair which was taken by Sir Abdur Rahim.)

It had been pointed out repeatedly by more than one Honourable Member opposite that there were two substantial points of principle involved. The first was that power should be obtained in certain circumstances to remove persons from Bengal under the Bengal Criminal Law Amendment Act to some other province. The second was that the *habeas corpus* provisions in section 491 of the Criminal Procedure Code should apply to detentions under the present Bill and the local Act. Well, Sir, I can myself come to no other possible conclusion than this, that the plain intention of this House in sending the Bill to the Select Committee was —and I say this most emphatically because there was not a single dissentient voice—that those two provisions were approved by the House, and I am surprised that they should at this stage be challenged. I admit that Honourable Members both before the Bill was committed to the Select Committee and after it had emerged were perfectly entitled to argue the subsidiary matters which might either mitigate or alleviate or qualify the effect of these two principles. I have not the slightest objection to any Honourable Member advancing arguments of that kind and making suggestions of that nature. But it does seem to me a very astonishing thing that any Honourable Member in this House should now say that it is open to this House to eat its own words and to resile from its own decision which was arrived at, such a short time ago, without some serious imputation upon its wisdom on that occasion or its wisdom on the present occasion. It is not however my concern to say that any Honourable Member when he challenges the principle of detention without trial, is not within his constitutional rights in doing so. But the point which was raised with some emphasis and at some considerable length by my

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Honourable friend from Bengal, Mr. Biswas, as to our relation as the Central Legislature with the Legislature of the province, which is most intimately concerned with the extremely dangerous subject-matter and with all those circumstances which have created the necessity both for the local measure and for the measure which I now lay before the House, is a matter which this House ought to take very seriously into consideration. It has not received adequate consideration, and I was somewhat painfully impressed, I must confess, by some of the observations which fell from the Honourable Member from Burma. We were given to understand that somewhat late in the evening of the firmament of this Assembly a new constellation had arisen, a light hitherto concealed in a bushel in Burma, which was going to illumine all the dark corners of this lamentably neglected House, which was to bring back to it or, to provide it with a degree of enlightenment of wisdom and of legal and constitutional learning which in the deplorable absence of the Honourable Member had hitherto been conspicuously absent. After such a portentous announcement, Mr. Chairman, I confess I waited with some anxiety and a great deal of expectancy for what should follow, and what did follow? What followed was precisely what I wish very strongly to contest now in this House. It was a very serious charge brought against not only the Local Government but the local Legislature of Bengal. Now, Sir, it appears to me that whether or not we like or dislike the principle involved in this Bill, we ought to treat the deliberate opinion and the decision affirmed and re-affirmed on several occasions by overwhelming majorities of the Local Legislative Council at least with due consideration and respect. We ought to reflect, Sir, that that Legislature is more fully cognisant with the facts than we, however well-informed, can possibly be. We ought to remember that that Legislature is more primarily concerned, more deeply affected and more directly responsible than we, great as is our responsibility in the matter, can possibly claim to be. I regard it as a very deplorable feature in the debate,—I frankly admit that doctrines and arguments of this kind were confined to very few Honourable Members,—but I can only record my very deep regret that there should have been found even a single Member of this House to advocate doctrines of that nature.

Sardar Sant Singh: May I enquire from the Honourable Member whether the Central Government always follow this rule of depending entirely on the judgment of the Local Administration and never overrule their decisions?

Sir Abdullah Suhrawardy (Burdwan and Presidency Divisions: Muhammadan Rural): They over-rule Local Administration's recommendations for mercy, but support Local Administration's demands for punishment.

The Honourable Sir James Crerar: I am not asking the House to be bound irrevocably by the decisions or deliberations of any other authority whatever. What I do contend is that reasonable respect and reasonable consideration should be paid to a body of men who constitute no less than we ourselves, a Legislature, and so far as these arguments are concerned, I maintain that the Legislature of Bengal has not been treated with consideration, that its conclusions, in so far as the arguments to which I am particularly referring are concerned have been—I say the words deliberately—contemptuously dismissed. I am the more surprised that arguments of this kind should have fallen from Honourable Members who

are I believe strong advocates of constitutional advance, and particularly of provincial autonomy. If doctrines of that kind should prevail in this House,—though I have not the slightest doubt that the considered decision of this House will not endorse them—but if they were to prevail and if they were to be so endorsed, I confess I should tremble for the fate of provincial autonomy and the possible consequences of responsibility at the centre.

(At this stage Mr. President resumed the Chair.)

I think it is a most unreasonable point of view, conditions being what they are, the local Legislature and the local Government being confronted by the extremely dangerous situation by which they are confronted, that they should be offered by this House or even by any section of this House a mere academic and theoretical reply. Honourable Members who hold those views have said that never in any circumstances would they be parties to a measure which involves detention without trial, never in any circumstances whatever. May I remind Honourable Members, as I have had occasion to remind them on many previous occasions, that this measure has a long history behind it? No one who is prepared fairly and candidly to consider the issues that arise will be prepared to deny that it has in practice been found impossible to deal effectively with the terrorist movement by the ordinary provisions of the law. That has been the verdict during the course of more than twenty years of a long succession not merely of executive officers but of judicial officers. It has been the view recently, solemnly and repeatedly affirmed, as I have said before, by the local Legislature most immediately responsible. Are we doing our duty as the Central Legislature, are we doing our plain duty to the local Legislature in this matter if we present them with that frigid and blank reply and say, "No, whatever your difficulties may be, however dangerous the situation which you are confronted with may be, though your powers in the matter are not adequate, are not sufficient to enable you to effect what you consider it necessary to effect, no, there are certain important theoretical principles which prohibit us from coming to your assistance". It is very much as if a man saw another struggling in the water, attempting by the vigour of his limbs to save himself by swimming and I would say to that man: "My poor fellow, you are miserably mistaken; you ought to reflect and rely on the immutable laws of the specific gravity of solid and fluid bodies; you ought not to attempt to extricate yourself by these puerile methods. I myself do not intend to move a finger to help you. You will probably be drowned, and if you are, I, at any rate, shall be able to console myself with the reflection that I gave you good advice and have myself been entirely consistent".

I come now very briefly to the question of *habeas corpus*, since this has been raised very pointedly by the Honourable Member who immediately preceded me. Like himself, I do not propose to follow or attempt to comment upon, still less to criticise or correct, the purely legal aspect of the question. I think I am concerned, at this stage at any rate, merely with the general executive aspect of the question. Now, the executive attitude towards this admittedly difficult matter was admirably expressed in that passage of my late lamented predecessor, Sir Alexander Muddiman, which was quoted almost *in extenso* by my Honourable friend from Bengal. I cannot add to and I cannot improve upon that statement. But the plain fact is this that if you are prepared to admit that all ordinary legal

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expedients have not succeeded and are not adequate to deal with the terrorist movement, if you admit that the vast preponderance of opinion in Bengal, certainly all sober, moderate and sensible opinion, is prepared to admit that, then when you make that admission you must accept the consequences that necessarily follow from it. It is idle for you to admit one proposition and to follow that up by saying, we must simultaneously admit another proposition, the two propositions being mutually incompatible. Unless you are prepared to say that the whole of the proceedings of the executive Government and the Legislature of Bengal are wrong *ab initio* that they ought immediately be put out of action, and that every possible technicality of law must be invoked to obstruct or to impede the operation of the measures passed in Bengal, unless you are prepared to say that, you must honestly face up to what follows from your admission of the main proposition that is to say we must go to the assistance of the Government of Bengal and of the Legislative Council of Bengal in matters which the law and the constitution puts beyond their power themselves to effect. Therefore this point emerges, and this was very clearly put by my predecessor. He admitted, as I myself admit, the very unpleasant necessity by which we were faced, but he pointed out very clearly that you cannot have it both ways. If you accept the major proposition, and by the major proposition I mean the proposition which has been accepted, affirmed and re-affirmed by the Government and the Legislature primarily and most immediately responsible, if you accept that proposition, then you must be prepared to accept the consequences that necessarily flow from it.

Sir Abdur Rahim: May I put one question? There is a certain procedure laid down, apart from any question of technicality. Does the Honourable Member say that even if the process laid down in the Bengal Act is not observed, even then the High Court is not to interfere at all.

The Honourable Sir James Crerar: I think my Honourable colleague, the Law Member has already more than once answered that question and I am not myself prepared to follow the purely legal technicalities of the question. I put the executive point of view on this difficult question, and any further observations that I may have to make on that I shall prefer to reserve to the stage at which the clause in question comes immediately under the consideration of the House.

I then pass on to what I agree is a very important matter, a matter which Honourable Members opposite are perfectly entitled to raise. It was a question put to me in the first instance by my Honourable friend Sir Cowasji Jehangir. He asked me if we are prepared to give an assurance to the House that if this Bill is passed and detenus are transferred from Bengal to other provinces every endeavour will be made to reproduce as far as may be practicable the conditions obtaining in Bengal in respect of diet and in respect of other conditions of detention. Well, I am perfectly prepared to give that assurance in the most express terms. So far as detention in places which are centrally administered areas is concerned, I give my Honourable friend a perfectly clear assurance that rules will be drawn up,—as a matter of fact they are now in process of being drawn up,—which will give effect to those conditions. Those rules will be notified by the local authority and they will be reproduced in the Gazette

of India; and I may say that so far as the proposed camp at Deoli in the Ajmer province is concerned, every step is being taken to see that those conditions will be secured. An officer accustomed to deal with Bengalis will be in charge, assisted by another officer from the province of Bengal. Bengali cooks will be supplied,—that point was specifically brought forward,—and as far as possible the diet to which Bengalis are accustomed will be provided. Adequate medical arrangements are being made as well as arrangements for proper exercise and recreation, indoor and out-door games, a library, reading facilities, and so on. If there is anything in addition to these, anything which has arisen in the course of the present discussion, or any suggestion that may hereafter be communicated to me by any Honourable Member, I shall be very glad to consider it in the framing of the rules.

Sir Hari Singh Gour: Will the Honourable Member read the condition about interviews?

The Honourable Sir James Crerar: I will deal with it separately.

So far as other Local Governments are concerned, our policy in the matter is perfectly clear. They are well aware of it. But I shall see that, if a case should arise under these provisions of persons being transferred from Bengal to other provinces instructions in that sense will issue.

As regards interviews, I will be equally explicit, and I hope the Honourable Member who puts me the question will be satisfied. It was suggested that part of the object in proposing these transfers was entirely to deprive the detenus of any opportunities of interview. That, Sir, is a total misapprehension. I do not deny, and indeed it has always been part of my case that one of the reasons which have necessitated this proposal for the removal of the detenus from Bengal is to see that the utmost vigilance is exercised over communications for improper and unlawful purposes with the outer world and this must be carefully provided for. There is no intention whatsoever that the detenus at Deoli or in any other place outside Bengal should have undue and unwarranted restrictions placed upon rights to interviews which are now preserved for them in Bengal. That, Sir, I hope is perfectly explicit.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): In this connection may I ask the Honourable the Home Member whether in cases of interviews travelling allowance will be allowed to the relations of the detenus?

The Honourable Sir James Crerar: I cannot give an undertaking to the Honourable Member that on all occasions whenever an interview is applied for it will be granted. Those conditions do not apply in Bengal at the present time.

Mr. C. S. Ranga Iyer: I am asking whether travelling allowance will be granted to the relations of the detenus.

The Honourable Sir James Crerar: I have said, Sir, that as regards interviews the intention is that every reasonable opportunity shall be granted for interviews. But Honourable Members opposite have asked whether the Bengal Government should be required to defray the travelling expenses for such interviews. Now, Sir, that seems to me to raise another and a more difficult issue, and I cannot consent,—I shall be

[Sir James Crerar.]

perfectly frank and explicit in the matter—I cannot consent to imposing any statutory obligation upon the Government of Bengal to undertake what might involve very heavy expenditure. No such privilege has ever been asked for, and so far as I am aware, certainly it has never been granted to any other class of prisoners whatsoever.

Some Honourable Members: They are not prisoners.

The Honourable Sir James Crerar: I do think that, though we must necessarily call upon the tax-payer to defray what is necessary in the interests of the public security and peace, which are incidentally to his own interests, it is a somewhat different matter to call upon the tax-payer of Bengal to defray from his own pocket the cost of something which cannot be called a public interest; which is entirely a private interest and a private interest which in certain conceivable circumstances may well be opposed to the public interest and the interest of the tax-payer.

That, Sir, I think concludes what I have to say upon these points, and I shall now very briefly endeavour to recall the House to what, after all, is the main issue before it. Hardly anything has been said in the course of the whole debate upon the great gravity of the position with which the Government of Bengal are confronted. I do not wish to go over that ground again; but before I conclude, I do desire to emphasise to the House that that really is the greatest and most important issue which is now before us. No one throughout the whole course of the debate has denied that the emergency is a very grave one and that the danger is a very serious one. It is on the question of taking some practical step in pursuance of that abstract proposition that I find myself confronted with difficulties. But I do implore the House to recall to their minds what the gravity of that issue is. I will not repeat any of the long tragic catalogue of crimes with which the annals of Bengal in recent times have been darkened. Honourable Members are aware of those facts, and if they are not prepared to face them, no reiteration of mine would affect them. But I do think they are prepared to face them and that it is only by the course of the debate and the emphasis which has been laid on certain questions of abstract law and questions of a relatively minor administrative character, that their minds have been diverted from that great issue. It is an issue, as I say, with which the executive Government of Bengal and the Legislative Council of Bengal are immediately and primarily concerned. They have applied to us for assistance. I think, Sir, that we ought to have sufficient imagination and sufficient sense of our own responsibilities, because powers are vested in us which are not vested either in that Government or in that Legislature. To recognize that we on our part have it in our power to do something to assist them in dealing with their dangerous situation. This is the measure of our responsibility and I contend that the House will greatly fail in its duty if it is not prepared to discharge that responsibility.

Mr. President: The question is:

"That the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 14th March, 1932.

APPENDIX*.

Khan Bahadur Makhdum Syed Rajan Bakhsh Shah (South-West Punjab: Muhammadan): Mr. President, although it is for the Indians to consider, accept or reject the annual Budget, we have the rule of a foreign Government which, for its own ends, still prefers to trample upon this right of the Indians, so much so that Government officials more often than not do not see their way to accepting the views put forth by poor Indians. So, to me it looks as if all this has become a matter of mere routine—for some independent Government Member each year to present the Budget and for the helpless representatives of the country in this House to raise a little hue and cry over it and then suffer it to pass as desired by Government.

I would rather give my praise to the Honourable Member for all the brain work he has done and the labour he has devoted to the preparation of a difficult subject such as the Budget is. But my conscience dictates otherwise. I leave this to the official Members of the House as it would be upon them eventually to do both as regards the ultimate result and advantage of the present discussion.

I had a mind to discuss the Budget, item by item, but then I think it would be unwise to waste time over a useless discussion, for, were not all the Resolutions carried by the House in connection with the Budget rendered null and void by Government during the last November Session? For that reason, therefore, I would like to make only a short speech on the Budget.

I would first of all submit that while we moderate Indians of the present generation have no desire to sever our relations with the British people, nobody can say what may happen to the generations succeeding us, when it may not be possible for them to continue these relations as before. Considered from this point of view, the subject demands that we should not leave our future generations unsafe. It is therefore very necessary to do something to revive the military spirit of the Indians that has been dying out under the ægis of the British Government, lest our future generations should come to suffer the same fate as the Chinese are doing now in their own country.

It is therefore up to the Government to set aside their own ends out of regard for the benefit of 35 crores of their subjects, and immediately repeal the Arms Act, thus giving a male population of nearly 18 crores the opportunity of gaining the same sort of military knowledge as the British people themselves possess in their own country, England. Let the British nation rest assured that if in years to come relations between the rulers and the ruled continue to be pleasant through British statesmanship, it would greatly help to improve the existing relations between them and the future generations of India, and their Empire, on the strength of a military population of 18 crores in this country would continue to be the greatest and the strongest Empire in the world.

In this connection I would rather emphasise the demand that in the present Indian Army the number of each community should correspond to the fundamental right allowed to it in each province on the basis of population. I understand that the number of Hindus, Mussalmans, Parsis and

Vide p. 1734 of Legislative Assembly Debates, dated the 9th March, 1932.

the "Untouchables" in the Indian Army as it stands at present is very much lower than that warranted by their political rights. The Mussalmans are essentially a martial race, but the Hindu community is not devoid of military instinct either. Did not the Hindu troops prove their mettle as such under their Muslim rulers? Can Central India forget the skill of sword displayed by Hindu warriors of the 18th century? Similarly, as long as the world-famous book the "Shah-Nama" of Firdausi, Tusi, is there in the world, military traditions of the Parsis will also live.

It therefore behoves the Government to help the subject people under them in the development of their mental and fighting faculties, and rebut the charge so often levelled against it by its enemies that the British are destroying the morals of their Oriental subject people.

Then, as regards the provision made for increased expenditure, it would be a service both to the Government and to the public to point out that the poor and poverty stricken India of today cannot any more bear the burden of the expenditure proposed. India is that most unfortunate country of the world which, notwithstanding her fabulous fertility, is the very picture of poverty and distress under the British Raj. The reason for this is no other than that we are made to provide 50 million British people with the comforts of life in such ample measure that very little is left to suffice for even the bare necessities of life of 350 million people in the country itself.

We have no desire to see the British troops leaving this country; but this should not mean that their presence should present us with a problem as good as that of a wolf who, while offering to save the lamb from the lion, ultimately chose to devour it himself. I would therefore press that the strength of the British troops should be reduced to the minimum and that the country be relieved of the intolerable and unpleasant burden arising from the maintenance of the foreign element of the Indian Civil Service.

Undue preference has been given in the Budget to military expenditure over other items of greater public utility. Now this is a matter which has for a long time been the subject of public grievance. For instance, in an agricultural country like India, agriculture remains inadequately provided for. The result is that worse today is the lot of the cultivator in India. Were the Honourable the Finance Member to tour the country-side in the garb of a *Patwari*, he would see for himself that women and children of these very cultivators who, in a way are responsible for feeding the whole country, go about their work half-naked and semi-starved both in the biting chill of the winter and the scorching heat of the summer—women and children whose lean figures and withered looks are an unmistakeable proof of the fact that the Sarkar has not been smiling on them.

May I ask if it is this hardworking and industrious section of the population which Government always choose to describe as its "Backbone"? I, as a representative of the historic city of Multan in the south-west of the Punjab, regret to reveal the fact—sad yet true—that, thanks to the pressure brought about by our humane Government in connection with the realisation of their dues from the cultivator, even at this critical period of general economic distress and difficulty, the latter in some instances has had to sell his few ornaments, clothes and even his daughters to pay off the Sarkar.

I ask again if it is not the same loyal and law-abiding section of the population which the Government have been drawing upon for hundreds and thousands of recruits in order to protect the Empire? And yet high Government officials have made fools of these people by declaring off and on that "Government have every sympathy with them". What a *glowing* picture of sympathy is this indeed. At this period of economic distress, when even the Government are feeling the pinch of it it is not that Government have only sucked the blood of the poor cultivator but have sucked it to the very last drop. Yet, look at the irony of fate: he is said to be under the obligation of partial remissions of revenue.

What I have said about petty landholders and cultivators is only too true. I can, without fear of exaggeration, declare that no other class of people under the Government is faring so badly as the agricultural class. Is it not wrong that officers and petty staff of almost every department go on harassing the poor cultivator? He is sick of the corruption on the part of most of the subordinate police officials. Would that the Honourable the Finance Member propose some effective remedy to combat the evil of bribery!

I also feel strongly on the subject of the income-tax. It is a pity that a man with an income of Rs. 1,000 shall have to pay income-tax in the same way as when his income was Rs. 2,000. But this is not all. The fact is that income-tax officers are trying to recover income-tax even from those whose income is not more than six or seven hundred rupees. I wanted to discuss this subject at length, but I would rather not do so as there are many in this House who would discuss a subject like this, but few who would bewail the lot of the poor zamindars.

I would, however, particularly draw the attention of the Honourable the Finance Member to the fact that there is room for a cut in the Budget. If items of heavy expenditure were carried in the Budget, the financial position of the country would get worse, and add further to the poverty and unemployment in the country.

And such a state of affairs leads generally to public unrest and disaffection. Those misguided and believing in violence get an opportunity of turning young boys and girls from the right path; and though no Government has ever yielded to violence or attempts at bloodshed on the part of the anarchists, the result nevertheless would be detrimental to the best interests of the country, and the pace of the present reforms which are now coming to the country through constitutional efforts would be indefinitely retarded. The Government, too, in such circumstances, are compelled to use force, and the result is that for the fault of a few hot-headed culprits, hundreds of innocent people suffer. So, while I strongly detest the murderous attempts by anarchists on the lives of British officers, I also express my deepest regret at the sufferings of my helpless and innocent brethren in the Frontier. I strongly protest against this policy of undue repression that has again been employed by Government on the Frontier. If I want to see the hands of the anarchist rendered powerless against British officers, I also want that the hands of the Government should be equally controlled so that they cannot fire on the innocent people anywhere in the country.

Already the promulgation of new Ordinances and the firing on that account in certain places have filled the public with feelings of indignation against Government; and this is a position I cannot as a true well-wisher

both of the Government and of the public suffer to put up with. Let Government understand that no Government can hope for a long life on the strength of aeroplanes, machine guns and artillery. That alone is a stable Government which rules the heart instead of the body.

Now to put an end to all the painful episodes I have referred to, let us lay the axe at the very root-cause. And it is this: let the Budget be cut down to such an extent that it may not add to the distress of the poverty-stricken population of the country.

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