

Tuesday, 22nd November, 1932

THE LEGISLATIVE ASSEMBLY DEBATES

(OFFICIAL REPORT)

VOLUME VI, 1932

(7th November to 28th November, 1932)

FOURTH SESSION OF THE FOURTH LEGISLATIVE ASSEMBLY, 1932



SIMLA
GOVERNMENT OF INDIA PRESS
1933

Est. B. N. H.

Legislative Assembly.

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Deputy President :

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LEGISLATIVE ASSEMBLY.

Tuesday, 22nd November, 1932.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Ibrahim Rahimtoola) in the Chair.

QUESTIONS AND ANSWERS.

LOWERING OF THE STATUS OF THE KOTLA POST OFFICE IN THE KANGRA DISTRICT.

1862. *Mr. T. N. Ramakrishna Reddi (on behalf of Mr. Jagan Nath Aggarwal): (a) Will Government kindly state if it is a fact that the telegraph branch of the Post Office at Kotla (Kangra District) was abolished some time last year?

(b) Is it also a fact that the sub-office at Kotla was converted into an Extra Departmental Sub-Office on October 10th, 1932?

(c) Are Government aware that the above steps taken by the Government have led to great inconvenience being felt by the public in general and pilgrims in particular?

(d) Has the attention of the Government been drawn to various letters which appeared in the press on the above subject, particularly the letters in the *Tribune*, dated the 18th of January, 1932, 24th February, 1932, and 17th June, 1932?

(e) Is it a fact that a proposal is under consideration to reduce the status of the Kotla Extra Departmental Sub-Office to that of an Extra Departmental Branch Office?

(f) Are Government aware that Kotla lies in the heart of the Grand Trunk Road running from Amritsar to Baijnath and that all passengers, pilgrims, and Chamba State people frequently avail themselves of this very Extra Departmental Sub-Office?

(g) Are Government prepared to give up the proposal of converting this Extra Departmental Sub-Office into an Extra Departmental Branch Office, should there be any such proposal afoot?

Mr. T. Ryan: Government have not seen the letters referred to in part (d), and have no information on the subject matter of the Honourable Member's question. The matter is one which is within the competence of the Head of the Postal Circle concerned to whom a copy of the question is being sent.

ALLOWANCE FOR CASUAL ABSENCES OF THE EMPLOYEES OF THE GOVERNMENT OF INDIA PRESS, NEW DELHI.

1868. *Mr. D. K. Lahiri Chaudhury (on behalf of Mr. S. C. Mitra): (a) Is it a fact that many men of the Government of India Press, New Delhi, were marked leave without allowance for their casual absences since the Fundamental Rules were introduced and that their absences were subsequently treated as leave with pay and payments were ordered by the Government of India?

(b) Is it not also a fact that the Manager has not yet made the payments? If so, why?

(c) Will Government be pleased to inform the House whether payments will be made at all and, if so, when?

The Honourable Sir Frank Noyce: (a) Leave taken in excess of the casual leave due was granted without pay to temporary men and these absences have not been subsequently treated as leave with pay. The Government of India have issued no orders authorising payment.

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

**PAYMENTS FOR INTERVAL PERIODS TO THE EMPLOYEES OF THE
GOVERNMENT OF INDIA PRESS, NEW DELHI.**

1964. ***Mr. D. K. Lahiri Chaudhury** (on behalf of Mr. S. C. Mitra): (a) Is it not a fact that previously payments were made to the employees of the Government of India Press, New Delhi, for the interval period when overtime work was done in the interest of Government work?

(b) Is it not also a fact that payments were stopped about three years ago and that the Controller of Printing assured the men that the matter had been referred to the Government of India?

(c) Will Government please say whether any orders were passed or not?

(d) If not, how long will they take to examine the matter and issue their orders to remove the discontentment of the men?

The Honourable Sir Frank Noyce: (a) Yes, except to pieceworkers recruited after the 1st November, 1922.

(b) Payment was stopped from the 1st July, 1928. In reply to a representation received in October last the Controller informed the men that the matter had been referred to the Government of India.

(c) and (d). Government are not prepared to revert to the previous practice.

**PAYMENTS TO THE INDUSTRIAL EMPLOYEES OF THE GOVERNMENT OF
INDIA PRESS, NEW DELHI, FOR WORKING ON SUNDAYS AND
HOLIDAYS.**

1965. ***Mr. D. K. Lahiri Chaudhury** (on behalf of Mr. S. C. Mitra): (a) Are Government aware that the industrial employees of the Government of India Press, New Delhi, were allowed a day's pay *plus* 50 per cent. and a day's pay *plus* 25 per cent. for attendance on a Sunday and a holiday, respectively?

(b) Is it not a fact that many men had to attend office on two Sundays during February and March last, that payments for attendance on these days were not made under the prevailing system and that the matter was referred to the Government of India for interpretation of their orders on such payments?

(c) Are Government aware that the men are much inconvenienced on account of the delay in payments and that they requested the Manager to get the matter settled immediately?

(d) Are Government prepared to pass orders at an early date directing payments to be made as before or to revert to the old system of allowing

a day's leave in lieu of a Sunday or a holiday attendance as was done before?

The Honourable Sir Frank Noyce: (a) Yes.

(b) The reply to the first part is in the affirmative. Payments were made to the men but were objected to by the audit authorities who referred the matter to the Government of India for a correct interpretation of their orders.

(c) No delay in payment took place. Certain employees made a representation and were informed that an interpretation of the orders must be awaited.

(d) Government cannot revert to a practice which was based on a misinterpretation of their orders. Compensation leave for those holidays which are additional to the weekly holiday was abolished in 1928 and Government are not prepared to re-introduce it, but they agree that compensatory holidays should be given for Sundays on every possible occasion.

EXPENDING POWERS ACCRUING TO PROVINCES ACCORDING TO THE REPORT OF THE FINANCIAL RELATIONS COMMITTEE.

1366. ***Mr. D. K. Lahiri Chaudhury** (on behalf of Mr. B. N. Misra): Will Government be pleased to lay on the table:

- (a) a copy of an estimate of the expending power which will accrue to each Province according to paragraphs 16 and 17 of the Financial Relations Committee's Report;
- (b) the memorandum of the Madras Government with its estimates of the existing and proposed expenditure in putting forth its financial position as laid down in paragraphs 16 and 17 of the Meston Report or Award; and
- (c) whether the sum of about Rs. 8½ lakhs payable by the Government of Bihar and Orissa as interest on the capital outlay on the Orissa Canal System was taken into account in the ordinary estimates of income and expenditure of the Government of Bihar and Orissa as stated in paragraphs 16 and 17 referred to above?

The Honourable Sir George Schuster: (a) and (b). Government do not consider that any useful purpose would be served by having these papers, which are now 12 years out of date, reprinted, but if the Honourable Member has any particular points on which he desires information, I will endeavour to enlighten him.

(c) Yes.

SAVING EFFECTED BY THE DISCONTINUANCE OF THE THROUGH BOGIE FROM LUCKNOW AND CAWNPORE TO BOMBAY AND VICE VERSA.

1367. ***Mr. J. Ramsay Scott:** (a) Will Government please supply the following details of traffic between Bombay and Lucknow and Cawnpore and between Lucknow and Cawnpore and Bombay:

- (i) the total weight of goods carried over the Great Indian Peninsula Railway; and
- (ii) the total value in rupees received by the railway for such freight?

(b) Will Government please state the saving accrued to the Great Indian Peninsula Railway through the discontinuing of the through bogie from Lucknow and Cawnpore to Bombay and *vice versa*?

(c) Are Government aware of the inconvenience caused by the discontinuance of the through service to some of its customers?

Mr. P. B. Rau: (a) Returns containing the information asked for are not at present maintained. If my Honourable friend will let me know for what purpose he requires this information, Government will consider whether special steps should be taken to collect it.

(b) From rough calculations which have been made, it appears that the saving probably amounts to not less than Rs. 100 a day.

(c) Government are aware that the discontinuance of the through service has caused inconvenience to certain passengers but the action taken by the Great Indian Peninsula Railway was, as already explained by me in reply to another question by my Honourable friend, taken as an economy measure, having regard to the traffic offering.

REVISION OF THE SCALES OF PAY OF THE GAZETTED AND NON-GAZETTE ESTABLISHMENTS UNDER THE GOVERNMENT OF INDIA.

1368. ***Mr. D. K. Lahiri Chaudhury** (on behalf of Mr. S. G. Jog): Will Government be pleased to state:

- (a) whether Mr. Sloan, the Officer on Special Duty, has completed the report of revising the time-scales of pay of gazetted and non-gazetted establishments under the Government of India;
- (b) whether all the points raised in the Resolution of Mr. Muhammad Muazzam have been taken into consideration according to the assurance given by the Honourable the Finance Member;
- (c) whether the proposed time-scale of the non-gazetted establishments working under the Government of India is uniform;
- (d) the proposed time-scale of gazetted and non-gazetted establishments working in the following offices in the cities of Bombay and Karachi:—(1) Income-Tax (2) Accounts (3) Customs (4) Currency and (5) Mint; and
- (e) whether the new scale of pay is to be applied to the future entrants or to the present staff also?

The Honourable Sir George Schuster: (a) The work connected with the revision of pay scales is not yet completed.

(b) The assurances given by Sir Alan Parsons on the 7th September, 1932, are being implemented.

(c), (d) and (e). As the proposals have not yet been approved by Government I regret that their nature and the extent of their application cannot be revealed.

ISSUE OF DIRTY CURRENCY NOTES BY SOME CURRENCY AND TREASURY OFFICES.

1369. ***Mr. D. K. Lahiri Chaudhury** (on behalf of Mr. S. G. Jog): (a) Will Government be pleased to state if they are aware that dirty currency notes with a number of writings are still issued by some Currency and Treasury Offices and thereby persons find it difficult to get such notes exchanged in the market?

(b) If so, are Government prepared to issue instructions to the authorities concerned to see that only the superfine notes be re-issued? If not, why not?

The Honourable Sir George Schuster: The attention of the Honourable Member is invited to the answer to question No. 267 by Mr. Lalchand Navalrai on the 15th September, 1932. The instructions contemplate only the re-issue of notes which are in perfectly good condition and which the acceptors can have no difficulty in exchanging, and Government have no information that these orders are not being followed. They therefore do not consider it necessary to issue any fresh instructions.

ALLEGED CALLOUSNESS OF THE EAST INDIAN RAILWAY AUTHORITIES.

1370. *Mr. D. K. Lahiri Ohaudhury: (a) Has the attention of Government been drawn to the correspondence published headed "Callousness of Railway Authorities" on page 12 of the newspaper *Liberty* of Calcutta, dated the 29th April, 1932?

(b) If so, have Government made any investigation into the matter of the alleged utter negligence and carelessness on the part of the East Indian Railway authorities?

(c) If not, are Government prepared to do so now and state as to how the injury was caused to the passenger, Mr. H. C. Bhattacharjee, when he was travelling by the 8-Down Express, which was running between Etawah and Cawnpore?

Mr. P. R. Rau: With your permission, Sir, I propose to reply to this and question No. 1371 together. Government have not seen the correspondence referred to but are endeavouring to obtain a copy of the newspaper in question. Information regarding this occurrence is being obtained from the Agent, East Indian Railway. I shall place a full reply on the table in due course.

RENDERING OF FIRST AID TO INJURED PASSENGERS ON STATE RAILWAYS.

+1371. *Mr. D. K. Lahiri Ohaudhury: (a) Is it a fact that there is an arrangement under which the guard of a passenger train is to keep all sorts of medicines and other accessories ready with him to render any help or first aid in case of any serious accident or bodily injury caused to a passenger when travelling by railway?

(b) If so, why did not the guard of the 8-Down Express or the platform officer of the Cawnpore Railway Station render any help to the injured passenger, Mr. Bhattacharjee, on the 29th April, 1932, on the Cawnpore platform but asked by wire the Railway doctor at Allahabad to attend to his injuries?

(c) Is it a fact that the Railway doctors at Allahabad and Mirzapore also did not render any help to the injured passenger and that the first aid was given only by the Railway doctor at Moghalsarai the next morning?

(d) Are Government prepared to see that efficient arrangements are made in all important stations on the East Indian Railway and other State-managed Railways for promptly rendering first aid to passengers who receive injuries from accident in course of travelling by trains on their lines?

**LATE COMMUNICATION OF GOVERNMENT ORDERS REGARDING THE
ADJUSTMENT OF COMMUNAL INEQUALITIES IN THE POSTS AND
TELEGRAPHS DEPARTMENT.**

1372. ***Seth Haji Abdoola Haroon:** (a) Is it a fact that the Government of India, Home Department, Memorandum No. F.-176/25-Est., was issued on the 5th January, 1925, and that the Director-General, Posts and Telegraphs, issued a general letter No. A. M.-576/12/27, on the 22nd November, 1927, communicating the principle of Government in adjusting communal inequalities?

(b) If the dates of issue of the orders referred to above are correct, will Government please state what made the Director-General to communicate the orders of the Home Department to his subordinates after a delay of about three years?

(c) Is it a fact that the Postmaster-General, United Provinces, issued a general letter communicating the above-mentioned Government order under No. Staff-B./X-194, dated the 18th October, 1930, i.e., after a lapse of another three years?

(d) Will Government please state how many years did the other Postmasters-General take to communicate the Government orders referred to in part (a) above?

The Honourable Sir Frank Noyce: (a) The date of issue of the Home Department Memorandum referred to is 5th February, 1926, not 5th January, 1925, as stated by the Honourable Member. The reply to the second part of the question is in the affirmative.

(b) Does not arise. I may, however, explain that the Memorandum in question referred to measures to be adopted for securing the appointment of members of minority communities in the Government of India Secretariat and Attached Offices, and did not, therefore, apply to the Posts and Telegraphs Department generally. However, after some consideration it was decided in 1927, that the same procedure should be followed in clerical recruitment for all branches of the Posts and Telegraphs Department.

(c) No; the orders were first communicated by the Postmaster-General, United Provinces Circle, on the 24th January, 1928.

(d) Enquiries are being made and a reply will be placed on the table in due course.

NUMBER OF MUSLIMS AND NON-MUSLIMS IN CERTAIN OFFICES.

1373. ***Seth Haji Abdoola Haroon:** Will Government please lay on the table a chart showing the number of Muslims and non-Muslims in the following cadres in the years 1925, 1927, 1929 and 1931:

1. Superior Telegraph Traffic Branch.
2. Superior Telegraph Engineering Branch.
3. Superior Wireless Branch.
4. Telegraph Masters.
5. Engineering Supervisors, General.
6. Engineering Supervisors, Telephone.
7. Electrical Supervisors?

8. Accountant-General, Deputy Accountant-General, and
9. Assistant Accountant-General.
10. Assistant Accounts Officers.
11. Telegraphists, General Service and Station, in each province.
12. Clerks, Class I, II and III, Munshis and Timekeepers in each province.

The Honourable Sir Frank Moyce: A statement as regards items 1-10 is laid on the table. As regards items 11-12, the information is not readily available and Government consider that its collection would involve an undue expenditure of time and labour.

Statement.

		1925.		1927.		1929.		1931.	
		Mus-lim.	Non-Mus-lim.	Mus-lim.	Non-Mus-lim.	Mus-lim.	Non-Mus-lim.	Mus-lim.	Non-Mus-lim.
1	Superior Traffic Branch, I Division	..	14	..	14	..	14	..	14
	Superior Traffic Branch, II Division	..	35	..	35	..	35	..	35
2	Superior Telegraph Engineering Branch	..	55	..	49	..	55	1	52
	Assistant Engineer-General	..	15	..	14	..	14	..	12
	Assistant Engineer-Telephone	..	2	..	2	..	2	..	2
	Assistant Electrical Engineer	..	4	..	4	..	4	..	3
3	Superior Wireless Branch	..	7	..	7	..	7	..	7
	Assistant, Engineer, Wireless	..	2	..	2	..	2	..	2
4	Telegraph Master	3	350	6	317	9	317	9	309
5	Engineering Supervisors, General	7	110	7	127	7	126	8	156
6	Engineering Supervisors, Phone	2	34	2	44	2	46	3	54
7	Electrical Supervisors	..	50	1	57	1	56	1	64
8	Accountant-General and Deputy Accountant-General	..	6	..	6	..	6	..	6
9	Assistant Accountant-General	..	2	..	2	..	3	..	3
10	Assistant Accounts Officer	..	7	..	13	..	13	..	16

RECRUITMENT OF MUSLIMS AS TELEGRAPHISTS, GENERAL SERVICE AND STATION SERVICE, IN THE PUNJAB AND NORTH-WEST FRONTIER POSTAL CIRCLE.

1374. *Seth Haji Abdoola Haroon: Is it a fact that out of 21 vacancies of Telegraphists, General Service and Station Service in the Punjab and North-West Frontier Circle, only one has gone to the Muslims and the rest to non-Muslims during the last recruitment?

The Honourable Sir Frank Noyce: Recruitment of telegraphists is made mainly by an open competitive examination on an all India basis, but a proportion of vacancies is reserved for recruitment from men already in the Department. In the last recruitment out of 245 candidates who entered for the written examination, only 12 were Muslims, of whom only one passed the examination. By the assignment of grace marks however three more were also treated as if they had done so.

Of the candidates from the Punjab, 21 were appointed to the service including one Muslim.

As regards departmental appointments, out of ten taken from the Punjab, six were Muslims. I should add that it may unfortunately, owing to retrenchment, prove impossible to confirm all these ten men as telegraphists.

NON-RECRUITMENT OF MUSLIM CLERKS IN THE CENTRAL TELEGRAPH OFFICE, NEW DELHI.

1375. *Seth Haji Abdoola Haroon: Is it a fact that not a single Muslim clerk has been recruited in the Central Telegraph Office, New Delhi, since 1927, whereas ten non-Muslims have been recruited?

The Honourable Sir Frank Noyce: No, only six clerks have been recruited and two of those have been Muslims.

Mr. M. Maswood Ahmad: Will the Honourable Member be pleased to state if these Muslim clerks include Ikramuddin and Fakhrul Hussain who are not in service and one of whom was employed only for about two months, after which he was dismissed and replaced by a Hindu clerk?

The Honourable Sir Frank Noyce: The Honourable Member can hardly expect me to be familiar with the names of the personnel of the department. I will make inquiries on the point he has mentioned.

* **Mr. M. Maswood Ahmad:** Apart from those four Hindus mentioned by the Honourable Member, is it a fact that Messrs. H. D. Pant, Girdharilal, Madheram, L. D. Joshi, Devi Parshad and Time Keeper, Mr. Sohanlal, were recruited after 1927 and were appointed by the Post Master General for Delhi-Simla Offices which constitute practically one office?

The Honourable Sir Frank Noyce: I have said that six clerks have been recruited and that two of those have been Muslims.

Mr. M. Maswood Ahmad: I am giving six Hindu names to the Honourable Member.

The Honourable Sir Frank Noyce: I presume that my information is correct. I do not know from what source the Honourable Member obtained his, but I shall be very glad to go into the matter and see which of us is correct.

Mr. M. Maswood Ahmad: I hope the Honourable Member will lay on the table the result of his enquiry for our information.

NON-RECRUITMENT OF MUSLIM CLERKS IN THE OFFICE OF THE DIVISIONAL ENGINEER, TELEGRAPHS, NEW DELHI.

1376. *Seth Haji Abdoola Haroon: (a) Is it a fact that since 1923 not a single Muslim clerk has been appointed in the office of the Divisional Engineer, Telegraphs, at New Delhi, whereas several non-Muslims have been taken in?

(b) Will Government please place a chart on the table showing the number of Muslims and non-Muslims recruited after 1925 in the different offices of Divisional Engineers, Telegraphs, in each province?

The Honourable Sir Frank Noyce: (a) No. Since the 1st January, 1923, one permanent and four temporary Muslim clerks have been appointed. In one case a Muslim clerk to whom an appointment was offered did not take it up, and in another out of 50 applicants for a post, none was a Muslim.

(b) Information has been called for and will be placed on the table in due course.

RECRUITMENTS IN THE TELEGRAPH DEPARTMENT.

1377. *Seth Haji Abdoola Haroon: (a) Will Government state whether the recruitment made in the Telegraph Department was in accordance with orders contained in the Home Department Memorandum No. F.176/25-Est., dated the 5th January, 1932?

(b) If not, have Government taken any action against the recruiting officers evading these orders or are Government going to take any action now? -

The Honourable Sir Frank Noyce: (a) I have been unable to trace any Home Department memorandum of the number and date quoted by the Honourable Member.

(b) Does not therefore arise.

ANGLO-INDIAN INSTITUTIONS AUTHORIZED TO SEND TRAINED MEN FOR APPOINTMENT AS GENERAL SERVICE TELEGRAPHISTS.

1378. *Seth Haji Abdoola Haroon: (a) Will Government please state the names of the Anglo-Indian institutions that are authorised to send trained men for appointment as General Service Telegraphists?

(b) Has any Hindu, Muslim or Sikh ever been recruited from any of these institutions?

(c) If not, why not?

(d) Is there any such Indian institution?

The Honourable Sir Frank Noyce: With your permission, Sir, I propose to deal with questions Nos. 1378 and 1379 together.

As regards part (a) of these questions, the system of recruitment of telegraphists through certain approved educational institutions was discontinued in 1929. The remaining parts of the questions do not therefore arise.

**INDIAN INSTITUTIONS AUTHORIZED TO SEND TRAINED MEN FOR
APPOINTMENT AS STATION SCALE TELEGRAPHISTS.**

†1379. ***Seth Haji Abdoola Haroon:** (a) Will Government please state the names of the Indian institutions that are authorised to send trained men for appointment as Station Scale Telegraphists?

(b) Has any Muslim ever been recruited as a telegraphist through any of these institutions?

(c) If not, are Government prepared to extend this privilege to the Government schools instead of private and Government-aided schools?

**NON-APPOINTMENT OF A MUSLIM ASSISTANT TO DEAL WITH ASSEMBLY
INTERPELLATIONS IN THE OFFICE OF THE DIRECTOR GENERAL,
POSTS AND TELEGRAPHS.**

1380. ***Seth Haji Abdoola Haroon:** (a) Is it a fact that in the office of the Director General, Posts and Telegraphs, the assistant, who is entrusted with the work in connection with Assembly interpellations, gets an honorarium during the Delhi Session and travelling allowance and daily allowance during the Simla Session of the Legislative Assembly?

(b) Has this work been ever entrusted to a Muslim Assistant?

(c) If the reply to part (b) be in the negative, will Government be pleased to state the reason?

The Honourable Sir Frank Noyce: (a) Clerical work in connection with Assembly interpellations is done by many assistants, in respect of one of whom, whose work in that respect is specially heavy, the fact is as stated.

(b) No. Muslim Assistant has so far been in charge of the special work mentioned in the reply to part (a).

(c) Communal considerations are not ordinarily taken into account in arranging the distribution of work in an office.

**COMMUNAL REPRESENTATION CASES IN THE OFFICE OF THE DIRECTOR
GENERAL, POSTS AND TELEGRAPHS.**

1381. ***Seth Haji Abdoola Haroon:** (a) Is it a fact that in the office of the Director-General, Posts and Telegraphs, cases about communal representation are dealt with by a Hindu clerk and that the Superintendent of the Section in which such cases are dealt with is also a Hindu?

(b) Do Government propose to consider the desirability of having communal representation cases dealt with by a Muslim clerk?

The Honourable Sir Frank Noyce: (a) While it is a fact that the Superintendents of the sections concerned with such cases are Hindus, it is not a fact that all such cases are dealt with by a Hindu clerk. They are handled by various clerks of the sections concerned some of whom are

Muslims. Such matters are not, in any event, disposed of either by clerks or Superintendents but by the Gazetted staff of the Directorate, and I may mention that the Gazetted Officer in charge of the branch which deals with most of them happens to be a Muslim. Final orders in connexion with such matters are generally passed by the Director General himself or by another European officer. I must not however be understood as accepting the Honourable Member's implication that in any case officers of one community can not be trusted to deal quite fairly with matters affecting other communities. That I am glad to have this opportunity of saying is not borne out by my experience of the office of the Director General, Posts and Telegraphs. (Applause.)

(b) No. The Honourable Member's attention is invited to the reply given in this House by the Honourable Sir James Crerar on the 16th September, 1931, to Mr. Muhammad Anwar-ul-Azim's starred question No. 840.

**FILLING UP OF VACANCIES IN THE OFFICE OF THE DIRECTOR GENERAL,
POSTS AND TELEGRAPHS.**

1382. *Seth Haji Abdoola Haroon: (a) Is it a fact that in the office of the Director General, Posts and Telegraphs, old officials with more or less 25 years' service whose volunteership for retirement was accepted by Government were re-appointed in the same office?

(b) Will Government be pleased to state the exact reason for re-employing these volunteers?

(c) Has the attention of Government been drawn to the letter published on page 8 of the *Postal Advocate* of August 1932, under the heading "Vacancies in Director-General's Office how filled in"?

(d) If so, what action has been taken in the matter?

The Honourable Sir Frank Noyce: (a) Yes.

(b) Government adopted the policy of re-employing, in lower paid posts which had to be filled, retrenched officials in order to mitigate hardship to men who were considered suitable for re-employment and were discharged as a measure of economy before attaining the age of superannuation.

(c) Government have seen the letter in question.

(d) None, as in view of the policy mentioned in the reply to part (b), none appeared called for.

**FILLING UP OF VACANCIES IN THE OFFICE OF THE DIRECTOR GENERAL,
POSTS AND TELEGRAPHS.**

1383. *Seth Haji Abdoola Haroon: (a) Will Government be pleased to state how many vacancies in the clerical cadre have been filled up in the office of the Director General, Posts and Telegraphs, since April 1932?

(b) How many of these vacancies have been given to Muslims?

(c) How many vacancies are still remaining to be filled up?

The Honourable Sir Frank Noyce: (a) Twenty.

(b) Three. Offers of employment were made by the Public Service Commission to two more Muslims, one of whom refused to accept and the other resigned after working for three days only.

(c) Three.

ALLEGED PARTIALITY IN THE ALLOTMENT OF QUARTERS TO THE ASSISTANTS AND CLERKS IN THE OFFICE OF THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS.

1384. *Seth Haji Abdoolah Haroon: (a) Are Government aware that a good deal of partiality exists in the allotment of departmental quarters to the assistants and clerks in the office of the Director-General, Posts and Telegraphs?

(b) Are Government aware that some applications from Muslim clerks establishing priority of claim for the allotment of quarters are neither referred to the members of the board for the allotment of departmental quarters, nor submitted to the Deputy Director General for orders, but are conveniently disposed of by the Chief Superintendent himself?

(c) Are Government prepared to issue orders to the effect that all applications for departmental quarters must either be referred to the members of the board for the allotment of departmental quarters or submitted to the Deputy Director-General for final orders?

(d) Will Government kindly state what principle is followed in ascertaining priority of claims in the allotment of departmental quarters?

Mr. T. Ryan: (a) No.

(b) No, all applications for quarters are disposed of by a board consisting of officials of the Director General's Office presided over by a gazetted officer.

(c) In view of the replies to parts (a) and (b) of this question, Government see no reason to depart from the existing procedure.

(d) Priority of claim is decided according to the provisions in the 'Rules governing the allotment and conditions of occupation of Government residences and quarters in Delhi', a copy of which has been placed in the Library of the House.

BURGLARY IN THE DILKUSHA AND ARAMBAGH SQUARES IN NEW DELHI.

1385. *Mr. M. Maswood Ahmad: (a) Has the attention of Government been drawn to an article on page 7 of the *Hindustan Times*, dated the 1st November, 1982, headed "Burglars Pose as Policemen—Diwali Night Sensation in New Delhi"? If so, will they be pleased to state whether:

(i) the quarters in Dilkusha and Arambagh Squares are situated in an out-of-the-way place and are often frequented by thieves; and

(ii) the police patrols do not visit these places during the night?

(b) Do Government realise their responsibility in the matter of protecting the lives and property of their employees who are allotted these quarters which are very far from the inhabited areas? If so, what steps have they taken to prevent such occurrences in the future?

(c) Is it a fact that the residents of these quarters submitted petitions in this connection to the Superintendent of Police, Delhi, and the Estate Officer? If so, what action has so far been taken on these petitions? If no action has yet been taken, what is the reason for the delay?

(d) Are Government prepared to issue immediate instructions to the local authorities for sending out regular police patrols during the night to these places and to bind down suspected persons living near or about these quarters?

The Honourable Mr. H. G. Haig: I have seen the article to which the Honourable Member refers and have asked the local authorities for a report as to facts on receipt of which I will lay a statement on the table. I understand however that no petition of the nature referred to in part (c) of the question was made to the Estate Officer by the residents of the locality.

Mr. M. Maswood Ahmad: Will Government kindly inquire from the Estate Officer whether he has received any petition from these clerks?

The Honourable Mr. H. G. Haig: I have just informed the House that we have inquired from the Estate Officer and he has received no petition.

**REFUSAL BY THE THIRD PRESIDENCY MAGISTRATE, EGMORE, TO EXAMINE
MR. SUBHAS CHANDRA BOSE IN HIS COURT.**

1886. ***Pandit Satyendra Nath Sen:** (a) Are Government aware that in the beginning of September, 1932, the Third Presidency Magistrate refused to examine in his Court at Egmore, Mr. Subhas Chandra Bose, the State Prisoner in the Penitentiary, as a defence witness in the case against Mr. Shanker?

(b) If the answer to the above be in the affirmative, will Government please state under what authority the Magistrate refused such examinations? If the Magistrate acted under Government orders, will Government state under what law they issued such orders?

(c) Is it not a fact that in the course of the debates on the Bengal Detenu Transfer Bill in the Legislative Assembly, the Home Member of the Government of India assured the Assembly that whenever any State Prisoner or detenu would be required to be produced in a Court of law for the purpose of evidence, he would be permitted to be examined?

(d) If so, why was the permission refused in the case of Mr. Subhas Chandra Bose who was then in the Penitentiary, Madras?

(e) Is it also a fact that the said Magistrate held his Court inside the Penitentiary in September, 1932, for the purpose of examining Mr. Bose, but did not allow the public and the press to be present?

(f) Is it a fact that when asked by the accused the Magistrate said that the trial was a public one?

(g) Will Government be pleased to state why the public and the press were not allowed and, under what law, the Magistrate excluded them?

The Honourable Mr. H. G. Haig: (a) and (b). The Third Presidency Magistrate refused to examine Mr. Bose in his Court at Egmore as in accordance with Rule 20 of the Criminal Rules of Practice issued by the Madras High Court, the evidence of State Prisoners should be recorded in jail, unless the Local Government sanction transfer to the Court. The Government of Madras did not give sanction, as no adequate reasons were advanced.

(c) and (d). The Honourable Member is no doubt referring to the undertaking given on behalf of Government by the Honourable the Law Member during the debate on the Bengal Criminal Law Amendment (Supplementary) Bill, 1982, that where any High Court desired the presence of a detenu as a witness in any trial before it, the detenu would be produced. The point does not arise in this case as no application requiring the presence of the State Prisoner as a witness was received from any Court.

(e), (f) and (g). The Magistrate held his Court in the jail to take the State Prisoner's evidence and excluded the public and press in exercise of the discretion vested in him by section 352 of the Criminal Procedure Code.

RECOVERY OF INDIAN INCOME-TAX ON PENSIONS PAID OUTSIDE INDIA.

1987. *Mr. M. Maswood Ahmad: (a) Are Government aware that the territorial limitations imposed on the powers of the Indian Legislature by section 65 of the Government of India Act render it impossible for the Indian Legislature to make effective provision for the recovery of Indian income-tax on pensions paid to persons resident outside India?

(b) Do Government propose to draw the attention of the Indian delegates to the Round Table Conference and of the British Government to the defect in the present Government of India Act mentioned in part (a)?

The Honourable Sir George Schuster: (a) That is the view of the legal position held by the Government of India.

(b) The Government of India do not propose to take the action suggested.

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

1988. *Mr. M. Maswood Ahmad: (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of.

- (i) the quantity and value of (1) Wheat in grain (2) Rice, husked including cargo rice and cleaned rice whole, but not including broken rice (3) Castor oil, linseed oil, cocoanut oil, ground-nut oil, rape oil, and sesamum oil (4) Magnesium Chloride (5) Linseed (6) Coffee (7) Tea (8) Coir yarn (9) Coir mats and matting (10) Cotton yarns, unbleached, up to No. 40 Count (11) Cotton manufactures (12) Leather undressed-hides other than sole leather (13) Leather undressed-skins (14) Jute manufactures (15) Oil seed cake and meal (16) Paraffin wax (17) Spices (18) Teak and other hardwoods, whether hewn or sawn, in so far as now subject to duty (19) Woollen carpets and rugs (20) Barn and pollard (21) Rice meal and dust (22) Tobacco (23) Castor seed (24) Magnesite (25) Sandalwood oil (26) Granite sets and curbs (27) Ground-nuts (28) Lead (29) Shellac, seed lac and stick lac (30) Jute, raw (31) Myrabolams (32) Rice, broken (33) Mica slabs and splittings (34) Crotalaria juncea and any other varieties of Indian hemp that can be distinguished (each article separately); exported from Indian ports in the last five years (each year separately);

(ii) the quantity and value of the articles mentioned in part (i) (each article separately) exported from Indian ports to the ports in the United Kingdom in the last five years (each year separately); and

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) imported into the ports in the United Kingdom (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately) (1) exported from Indian ports (2) exported from Indian ports to the ports in the United Kingdom and (8) imported in the ports in the United Kingdom?

(c) Will Government be pleased to state the reasons for excluding the sole leather from Schedule (c) under Article 4 of the Agreement?

The Honourable Sir Joseph Bhoré: With your permission, Sir, I propose to answer questions Nos. 1388 to 1396 together. The reply to parts (a) of each of these questions is, as regards the great majority of the items named, in the affirmative. As regards parts (b), generally all the information required is available in the Annual Statements of the Sea-borne Trade of British India, the Annual Statements of the Trade of the United Kingdom with Foreign and British Countries and the Trade Accounts of Ceylon and British Malaya. Statistics supplied to the Indian Delegation were not prepared in the form indicated in the Honourable Member's question. The mere extraction and compilation of these statistics in the form in which he has asked for them would require a very large amount of labour and expenditure of time. In view particularly of the fact that my Department has had very heavy calls made upon it in connection with the supply of statistical information to the Committee of this House which is examining the Trade Agreement, the special compilation of the voluminous statistics asked for by the Honourable Member could not have been undertaken at the present time without the employment of additional staff. I would, however, mention that copies of the Annual Statements of the Sea-borne Trade of British India are in the Library of the Legislature and, if desired by the Honourable Member, I shall arrange for the supply of copies of the other Trade Accounts which I have mentioned.

Parts (c) of questions Nos. 1388 and 1389. There are no imports of "Sole leather" as such into the United Kingdom from India and no exports of "Lead Sheets" from India.

Mr. M. Maswood Ahmad: Will the Honourable Member be pleased to give the information asked in those parts of these questions which deal with the Sea-borne Trade of the United Kingdom? Further, will the Honourable Member realise what is difficult for Government can not be easy for us?

The Honourable Sir Joseph Bhoré: Yes, it will be found there, and if any further information is necessary on that point, my Honourable friend may rely upon my helping him to obtain it.

Mr. M. Maswood Ahmad: May I take it that the Honourable Member will send this information to us?

The Honourable Sir Joseph Bhore: I said that the information is already there, and if there is any information which he cannot obtain from there, and if he will apply to me, I shall then try and assist him as much as I can.

Mr. M. Maswood Ahmad: May I inform the Honourable Member that the information which I want is not available in the Library?

The Honourable Sir Joseph Bhore: I think I have explained the matter quite clearly. I say that most of the information is available in the Annual Statements of the Sea-borne Trade of British India, and if the Honourable Member desires, I shall supply copies of the other trade returns I have referred to.

Dr. Ziauddin Ahmad: Will the Honourable Member be pleased to supply the two Statements together, I mean the Annual Statement of the Sea-borne Trade of British India and the Annual Statement of the Trade of the United Kingdom?

The Honourable Sir Joseph Bhore: I shall be only too happy to do so.

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

†1889. ***Mr. M. Maswood Ahmad:** (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

(i) the quantity and value of (1) Cotton piece-goods (2) Cotton yarn (3) Fresh fruits and vegetables (4) Dried, salted and preserved fruits and vegetables (5) Big lead (but not lead sheets, tea lead or foil) (6) Iron and Steel (7) Teak and other hardwoods (8) Perfumery (9) Coriander seed (10) Beans (11) Apparel (12) Boots and shoes (13) Woollen carpets and rugs (14) Tea (15) Coffee, raw, roasted or ground (16) Tobacco manufactures (each article separately) exported from Indian ports in the last five years (each year separately);

(ii) the quantity and value of the articles mentioned in part (i) (each article separately) exported from Indian ports to the ports in Ceylon in the last five years (each year separately);

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) imported into the ports in Ceylon in last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of articles mentioned in part (i) (each article separately) (1) exported from Indian ports (2) exported from Indian ports to the ports in Ceylon and (3) imported into the ports in Ceylon?

(c) Will Government be pleased to state the reasons for excluding the lead sheets from the Schedule E, under article 9. of the agreement?

†For answer to this question, see answer to question No. 1388.

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

†1390. *Mr. M. Maswood Ahmad: (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

- (i) the quantity and value of the (1) Tanned hides and skins (2) Brass, bronze, brassware and bronzeware (3) Copper and copperware (4) Paraffin wax (5) Perfumery (6) Ground-nuts (7) Cotton piece-goods (8) Fishmaws and sharkfins (9) Ground-nut oil (kachang oil) (10) Gingelly oil (each article separately) exported from Indian ports in the last five years (each year separately);
- (ii) the quantity and value of the articles mentioned in part (i) (each article separately) exported from Indian ports to the ports in British Malaya in the last five years (each year separately); and
- (iii) the total quantity and value of the articles mentioned in part (i) (each article separately) imported in the ports in British Malaya in the last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of articles mentioned in part (i) (each article separately) (1) exported from Indian ports (2) exported from Indian ports to the ports in British Malaya and (3) imported into the ports in British Malaya?

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

†1391. *Mr. M. Maswood Ahmad: (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

- (i) the quantity and value of (1) articles free of duty under Part I of Schedule II of the Indian Tariff Act (2) articles dutiable under the following entries in Part II of Schedule II of the Indian Tariff Act:—27A, 29, 43A, 43B, 45B, (3) Articles dutiable under Part III of Schedule II of the Indian Tariff Act (4) Articles dutiable under Part IV of Schedule II of the Indian Tariff Act, excepting entries numbers 60, 61 and 62 (5) Articles which are liable to protective duty at special rates under Part VII of Schedule II of the Indian Tariff Act (each article separately) imported into Indian ports in the last five years (each year separately);
- (ii) the quantity and value of the articles mentioned in part (i) (each article separately) imported into Indian ports from the ports in the United Kingdom in the last five years (each year separately);
- (iii) the total quantity and value of the articles mentioned in part (i) (each article separately) exported from the ports in the United Kingdom in the last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately) (1) imported into Indian ports (2) imported into Indian ports from the ports in the United Kingdom and (3) exported from the ports in the United Kingdom?

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT
OF CERTAIN ARTICLES.

†1892. *Mr. M. Maswood Ahmad: (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

- (i) the quantity and value of the articles (1) Apparel (including drapery, uniforms, accoutrements), (2) Apparel—caps, bonnets and hatters' ware, (3) Apparel—secondhand clothing, (4) Filled cartridge cases, (5) Empty cartridge cases, (6) Firearms, (7) Asbestos manufactures, (8) Boots and Shoes of leather, Brushes and Brooms, (9) Brushes (paint and varnish), (10) Toilet brushes, (11) Brushes (other than toilet and paint and varnish), (12) Firebricks, (13) Cement, Portland, (14) Cement, other than Portland, (15) Tiles, other than glass tiles, (16) Other kinds (except asphalt, bricks, chalk, lime and clay), (17) Buttons, metal (18) Tartaric acid, (19) Other acids (except acetic, carbolic, oxalic and tartaric), (20) Anhydrous ammonia, (21) Other ammonia and salts thereof, (22) Disinfectants other than naphthalene, (23) Bichromate of potassium, (24) Potassium compounds, other sorts (except chlorate and cyanide), (25) Bichromate of soda, (26) Cyanide of sodium, (27) Caustic soda, (28) Sodium carbonate (soda ash and soda crystals), (29) Soda compounds, other (except bicarbonate, borax and sodium silicate), (30) Other sorts of chemicals (except those indicated above as separately distinguished and except alum, arsenic, calcium carbide, glycerine, lead compounds, ferrous sulphate, magnesium compounds, sulphur and zinc compounds), (31) Cocoa and Chocolate, (32) Confectionery, (33) Cordage and Rope of Vegetable Fibre (excluding jute and cotton), (34) Cork Manufactures, (35) Cutlery (except pruning knives), (36) Proprietary and patent medicines, (37) Other sorts (except aloes, asafœtida, camphor, cocaine morphia), (38) Earthenware, except pipes and sanitary ware, (39) Porcelain, electrical, (40) Porcelain, other kinds, (41) Bedsteads, (42) Wooden furniture other than bedsteads, (43) Furniture of other materials, except bedsteads, (44) Glue, (45) Builders hardware such as locks, hinges, door bolts, etc., (46) Domestic, other than enamelled iron-ware, (47) Enamelled iron-ware, (48) Gas mantles, (49) Implements and tools other than agricultural implements and machine tools (each article separately) imported into Indian ports in the last five years (each year separately);
- (ii) the quantity and value of the articles mentioned in part (i) (each article separately) imported into Indian ports from the ports in the United Kingdom in the last five years (each year separately); and

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) exported from the ports in the United Kingdom in the last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately) (1) imported into Indian ports, (2) imported into Indian ports from the ports in the United Kingdom, and (3) exported from the ports in the United Kingdom?

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

†1893. ***Mr. M. Maswood Ahmad:** (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

(i) the quantity and value of the articles (1) Lamps, metal, (2) Parts of lamps, other than glass, (3) Safes and strong boxes of metal, (4) Stoves, (5) Other sorts (except agricultural implements, buckets of tinned or galvanised iron, lamps of glass), (6) Electric fans and parts thereof, (7) Electric wires and cables, (8) Standard lighting lamps, (9) Batteries, (10) Accumulators (including parts) in so far as they are subject to duty under No. 42A of Schedule II of the Indian Tariff Act, (11) Accumulators (including parts) in so far as they are subject to duty under 42A of Schedule II of the Indian Tariff Act, (12) Electric lighting accessories and fittings (including switches), (13) Meters (other than telegraphic and telephonic), (14) Other electrical instruments (other than telegraphic and telephonic), except meters, (15) Electro-medical apparatus (including X-ray), (16) Other electrical goods and apparatus (except electric wires and cables, telegraph and telephone instruments and apparatus, flash light, part and accessories of electric lamps, carbons, condensers, bell apparatus and switch boards), (17) Pianos and piano players, complete, (18) Talking machines and accessories (except records), (19) Other musical instruments and parts (except organs and harmoniums complete, and talking machines and records), (20) Cinematograph films, raw, i.e., blank films on which no picture has been impressed. (21) Photographic, other than above enumerated and exposed cinematograph films, (22) Photographic plates and papers, (23) Scientific and philosophical, (24) Surgical, (25) Wireless apparatus in so far as it is dutiable under No. 43 of Schedule II of the Indian Tariff Act, (26) Other instruments, etc., not indicated above as separately distinguished in the Trade Returns (except optical), including domestic refrigerators, (27) Skins, tanned or dressed, (28) Unwrought, (29) Lather cloth (including artificial leather), (30) Other manufactures of leather (except pickers, roller skins, saddlery and harness

†For answer to this question, see answer to question No. 1366.

and bags and trunks), (81) Ale and beer in bottle, (82) Ale and beer in other containers including barrels, (83) Spirit present in drugs, medicines or chemicals, (84) Spirit, perfumed, (85) Machinery and Millwork, all sorts subject to duty under No. 96 of the Indian Tariff Act, including sewing and knitting machines and parts thereof, and typewriters and parts thereof (each article separately) imported into Indian ports in the last five years (each year separately);

(ii) the quantity and value of the articles mentioned in part (i) (each article separately) imported into Indian ports from the ports in the United Kingdom in the last five years (each year separately); and

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) exported from the ports in the United Kingdom in the last five years (each year separately)."

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately) (1) imported into Indian ports, (2) imported into Indian ports from the ports in the United Kingdom, and (3) exported from the ports in the United Kingdom?

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

† 1394. ***Mr. M. Maswood Ahmad:** (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

- (i) the quantity and value of the articles (1) Aluminium circles, (2) Aluminium sheets, (3) Other aluminium manufactures (except unwrought ingots, blocks, bars, etc.), (4) Wrought mixed or yellow metal for sheathing (Brass, bronze and similar alloys and manufactures thereof), (5) Wrought: Rods (Brass, bronze and similar alloys and manufactures thereof), (6) Wrought: Sheets, (7) Wrought: Tubes, (8) Wrought: Wire, (9) Wrought: Other sorts, (10) Wrought: Rods, (11) Wrought: Sheets, (12) Wrought: Tubes, (13) Wrought: Wire, excluding telegraph and telephone, (14) Other copper manufactures (except braziers), (15) German silver (including nickel silver), (16) Iron and steel, all sorts, which are subject to duty under Nos. 60, 61, 62 and 97 of Schedule II of the Indian Tariff Act, (17) Pipes and tubes, (18) Sheets (other than sheets for tea chests), (19) Wrought or manufactured (Zinc or spelter), (20) Fish oil, (21) Essential—synthetic, (22) Natural essential oils (except almond, bergamot, kajuputti, camphor, cloves, eucalyptus, lavender, lemon, otto rose and peppermint), (23) Lubricating (mineral) other than batching, (24) mineral, paints, solutions and composition, dangerous, flashing below 76°F., (25) Vegetable non-essential oils (except cocoanut, groundnut and linseed), (26) oil-cloth and floor-cloth, (27) packing: engine and boiler

†For answer to this question, see answer to question No. 1388.

of all kinds (excluding asbestos), (28) Blue paint or Paris blue, (29) Enamels, prepared, (30) Red lead, genuine dry, (31) White lead, genuine dry, (32) Zinc white, genuine dry, (33) Other sorts (except barytes, graphite reduced dry red lead and white lead, moist white lead, reduced dry zinc white and moist zinc white), (34) Goods, other than turpentine and turpentine substitute and varnish (Other than Paints and Colours), (35) Packing paper, (36) Printing paper, except newsprint, (37) Writing paper in large sheets, (38) Envelopes imported separately, (39) Other kinds of paper (except "Note and letter paper and envelopes" and old newspaper in bales and bags), (40) Paper manufactures, (41) Other than star-boards (Pasteboard, millboard and cardboard of all kinds), (each articles separately) imported into Indian ports in the last five years (each year separately);

(ii) the quantity and value of the articles mentioned in part (i) (each article separately) imported into Indian ports from the ports in the United Kingdom in the last five years (each year separately); and

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) exported from the ports in the United Kingdom in the last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately), (1) imported into Indian ports, (2) imported into Indian ports from the ports in the United Kingdom, and (3) exported from the ports in the United Kingdom?

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

†1895. *Mr. M. Maswood Ahmad: (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

(i) the quantity and value of the articles (1) Manufactures of pasteboard, millboard and cardboard, (2) Canned or bottled fruits, (3) Tinned or canned fish, (4) Other canned and bottled provisions n. e. s. (except vegetable products—vegetable ghi and fat, etc.), (5) Milk, condensed and preserved including milk cream, (6) Pneumatic motor covers, (7) Pneumatic motor tubes, (8) Pneumatic motor cycle covers, (9) Pneumatic cycle covers, (10) Pneumatic cycle tubes, (11) Solid rubber tyres for motor vehicles, (12) Other manufactures except apparel, boots and shoes (and except pneumatic motor cycle tubes), (13) smokers' requisites (excluding tobacco), (14) soap: toilet, (15) Stationery (excluding paper), pencils (excluding slate pencils), (16) Other sorts, (17) Lace and embroidery, (18) Other sorts (except towels not in the piece), (19) Worsted yarn for weaving, (20) Knitting wool, (21) Carpets and floor rugs, (22) Hosiery, (23) Piece-goods, (24)

Shawls, (25) Other sorts (except blankets and rugs), (26) Toilet requisites not specified elsewhere in the Trade returns, (27) Toys (requisites for games and sports excluding fire-arms, etc.), (28) Playing cards, (29) Other, (30) Umbrellas, and umbrella fittings, (31) Carriages and carts not mechanically propelled (excluding railway carriages, trucks, etc.), (32) Parts of carriages and carts (excluding rubber tyres), (33) Cycles (other than motor cycles) imported entire or in sections, (34) Parts of cycles and accessories (other than of motor cycles) (excluding rubber tyres), (35) Motor cars (including taxi-cabs), (36) Motor omnibuses, (37) Chassis of Motor omnibuses, motor vans and motor lorries, (38) Parts of mechanically propelled vehicles and accessories other than of aircraft (excluding rubber tyres), (39) Canvas, cotton, (40) Shawls, in the piece, cotton, (41) Lace and patent net, cotton, (42) Fents, cotton, nine yards long or less, (43) Other sorts of cotton manufactures (excluding twist and yarn, piece-goods, thread for sewing, blankets, handkerchiefs in the piece, hosiery, rope and towels in the piece), (44) Lace and embroidery, (45) Other sorts of haberdashery and millinery, (46) Silk manufactures, excluding yarn, noils and warps, piece-goods and thread for sewing, (47) Goods of silk mixed with other materials, excluding twist and yarn, piece-goods and thread for sewing, (48) artificial silk manufactures, excluding yarn, piece-goods and thread for sewing, (49) Goods of artificial silk mixed with other materials, excluding twist and yarn piece-goods and thread for sewing (each article separately) imported into Indian ports in the last five years (each year separately);

(ii) the quantity and value of the articles mentioned in part (i) (each article separately) imported into Indian ports from the ports in the United Kingdom in the last five years (each year separately); and

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) exported from the ports in the United Kingdom in the last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately), (1) imported into Indian ports, (2) imported into Indian ports from the ports in the United Kingdom, and (3) exported from the ports in the United Kingdom?

TRADE AGREEMENT AT OTTAWA IN RESPECT OF THE EXPORT AND IMPORT OF CERTAIN ARTICLES.

†1396.***Mr. M. Maswood Ahmad:** (a) Will Government be pleased to state whether, while reaching the Agreement at Ottawa between His Majesty's Government in the United Kingdom and the Government of India, they were aware of:

(3) the quantity and value of the articles (1) Asphalt, (2) Beeswax, (3) Soda ash, including calcined, natural soda and manufactured sesqui-carbonates, (4) Gum Arabic, (5) Gum benjamin,

ras and cowrie, (6) Gum dammer, (7) Dammer batuh, unrefined, (8) Rosin, (9) Cutch, (10) Gambier, all sorts, (11) Citronella oil, (12) Cinnamon oil, (13) Cinnamon leaf oil, (14) Coconuts, husked, unhusked and other kinds, copra or coconut kernal, coconut oil, coir fibre, coir yarn, coir mats and matting, (15) Fish, dry unsalted, (16) Fish, dry salted, (17) Fish, canned, (18) Fresh vegetables, (19) Vegetables, dried, salted or preserved, (20) Fruit and vegetables, canned and bottled, (21) Fruit juices, (22) Sisal and aloë fibre, (23) Ivory, unmanufactured, (24) Oil seeds (other than essential), (25) Plumbago, (26) Sago and tapioca (but not sago flour), (27) Vanilla beans, (28) Fresh fruits (other than coconuts), (29) Dried, salted or preserved fruits, (30) Betelnuts, (31) Unground spices, (32) Bitters, (33) Coffee, (34) Rum, (35) Tea, (36) Unmanufactured tobacco (each article separately) imported into Indian ports in last five years (each year separately);

(ii) the quantity and value of the articles mentioned in part (i) (each article separately) imported into Indian ports from the ports in the United Kingdom in the last five years (each year separately); and

(iii) the total quantity and value of the articles mentioned in part (i) (each article separately) exported from the ports in the United Kingdom in the last five years (each year separately)?

(b) Will Government be pleased to lay on the table a statement showing separately for the last five years the quantity and value of the articles mentioned in part (i) (each article separately) (1) imported into Indian ports, (2) imported into Indian ports from posts in the United Kingdom and (3) exported from ports in the United Kingdom?

TERMINAL TAX ON PASSENGERS GOING TO BHUBANESWAR, SAKHIGOPAL AND PURI.

1397. *Kumar Gupteshwar Prasad Singh (on behalf of Mr. B. N. Misra): (a) Will Government please state the object of the terminal tax on passengers going to (1) Bhubaneswar, (2) Sakhigopal and (3) Puri?

(b) In what year was it first imposed?

(c) What Railways are authorised to collect the same and from what year respectively?

(d) Will Government please state the total collection under this head till March, 1932, by each Railway?

(e) If the figures are not available, will Government please make inquiry and lay on the table a statement showing the collections by each Railway for (1) Puri, (2) Sakhigopal, and (3) Bhubaneswar, respectively?

Mr. P. R. Ray: (a), (b), (d) and (e). I would refer the Honourable Member to the reply given by me on the 9th November, 1932, to his question No. 1082, on the same subject.

(c) The tax is collected through the agency of the Bengal Nagpur Railway.

Mr. Lalchand Navarai: May I know why this terminal tax is levied? Is it not something like a *Jissia* tax?

Mr. P. R. Rau: I do not think so. The tax is collected for the purpose of improving the amenities of these places for the pilgrims visiting them.

Mr. Lalchand Navarai: There is no other way of doing it?

Mr. P. R. Rau: The municipalities are not in a position to meet all the expenditure involved in making the places fit for the large numbers of pilgrims that visit these places every year.

Dr. Ziauddin Ahmad: Is it not a fact that this tax was levied at the request of the municipalities themselves?

Mr. P. R. Rau: At the request of the municipalities and the Local Government.

INDIAN MEDICAL DEPARTMENT ASSISTANT SURGEONS EMPLOYED ON THE NORTH WESTERN RAILWAY.

1398. ***Kumar Gupteshwar Prasad Singh** (on behalf of Mr B. N. Misra): Will Government please state:

- (a) the total number of Indian Medical Department Assistant Surgeons employed on the North Western Railway;
- (b) the total number of men of the Indian Medical Department allotted by the Railway Board for the North Western Railway; and
- (c) if the number of men of the Indian Medical Department is in excess of the number allotted, what steps have been taken to reduce them?

Mr. P. R. Rau: Information is being collected and a reply will be laid on the table in due course.

SELECTION OF "Y" CADETS BY INTERVIEW AND RECORD BOARD OF THE ARMY ENTRANCE EXAMINATION.

1399. ***Mr. S. G. Jog:** (a) Will Government please state:

- (i) the number of 'Y' cadets who were selected by the Interview and Record Board of the Army Entrance Examination held in June, 1931; and
- (ii) their names and the regiments in which they were enlisted?

(b) How many of such cadets were admitted to the Indian Military Academy during the term commencing on 1st October, 1932, and what are their names?

(c) Is it a fact that they were offered special enlistment terms by the General Staff Branch, Army Headquarters, on the understanding that on completion of their necessary training as laid down by their Commanding Officers they will be given every facility for getting a nomination to the Indian Military Academy, provided they were recommended by their Commanding Officers?

(d) Is it a fact that the Army Interview and Record Board was composed of high military and civil officials who considered these boys fit for King's Commissions?

(e) Will Government please state the names of such 'Y' cadets recommended by their commanding officers and brigade commanders for getting a nomination to the Indian Military Academy during the October 1932 term?

(f) If no such 'Y' cadets were selected for a nomination to the Indian Military Academy for the October, 1932 term, will Government please state their reasons for doing so?

(g) If Government were not willing to nominate such 'Y' cadets to the I. M. A. for the first term and they had enough stuff in the Indian Army for Indian Military Academy, will Government please state what necessity arose for special enlistments through the Interview and Record Board as 'Y' Cadets?

(h) Is it also a fact that King's Commissions were not open to the non-commissioned officers of the Indian Army at the time when 'Y' cadets were selected through the agency of the Interview and Record Board?

Mr. G. R. F. Tottenham: (a) (i) Twenty.

(ii) A statement is laid on the table.

(b) None.

(c) Yes.

(d) The Board, which consisted of high military and civil officials, was of opinion that the boys were likely to make suitable officers after training.

(e) and (f). The three candidates whose names are indicated by an asterisk in the statement I have laid on the table were recommended to Army Headquarters by their Commanding Officers and Brigade Commanders. They were not selected for the October, 1932 term as more suitable and better qualified candidates were available.

(g) Because in June, 1931, Government were not certain that the ranks of the regular Indian Army would, to start with, be able to produce sufficient men of the type required.

(h) Non-commissioned officers of the Indian Army were not eligible in 1930 for the King's Commission, but the rule was altered in 1931.

Statement.

Mohammad Ayub Khan, 2nd Punjab Regt.

Goverdhan Lal, 2nd Punjab Regt.

Sultan Muqarrar, 13th F. F. Rifles.

*Jogindar Singh, 14th Punjab Regt.

Wahed Haidar, 15th Punjab Regt.

Ram Narain Saxena, 7th Rajput Regt.

Abdul Hamid Khan, 1st Punjab Regt.

Mohammed Abdel Ali, 7th Cavalry.

*Dilip Chaudhuri, 7th Cavalry.

Silandar Khan, 19th Hyderabad Regt. Discharged, at own request.

*Recommended by Commanding Officers and Brigade Commanders for admission to the Indian Military Academy in October, 1932.

- Wazir Chand, 7th Rajput Regt.
- Swarup Singh, 4/9th Jat Regt.
- Jagat Singh, Probyn's Horse.
- *Jaswant Singh, 11th P. A. V. O. Cavalry.
- Sampuran Bachan Singh, 11th Sikh Regt.
- Hardip Singh Uberoi, 6th D. C. O. Lancers. Discharged, at own request.
- Satya Prakash, 19th K. G. O. Lancers.
- Gurkirpal Singh, Hodson's Horse.
- Sadiq Ullah Khan, 12th F. F. Regt.
- Maheshwar Nath Zutshi, who did not acknowledge the offer of a special enlistment.

Mr. S. G. Jog: Will the Honourable Member please explain the significance of the letter "Y" in "Y" cadets?

Mr. G. R. F. Tottenham: I do not know why "Y" has been used.

Mr. S. G. Jog: The Army Secretary is as ignorant as myself!

GRANT OF SPECIAL MESSING ALLOWANCE TO 'Y' CADETS.

1400 ***Mr. S. G. Jog:** (a) Are Government aware that parents of the so-called 'Y' cadets have spent enormous sums of money over their college education and that the latter's mode and habit of living is far superior to an ordinary Indian sepoy's with whom they are working side by side and given the same food without any special messing facilities?

(b) Are Government prepared to consider the question of granting some special messing allowance to such cadets till the period they are nominated to the Indian Military Academy?

Mr. G. R. F. Tottenham: (a) Considerable expenditure may have been incurred on the preliminary education of these cadets, but the standard of living of Indian troops is well known and their acceptance of the special enlistment terms must be taken as implying their readiness to adopt this standard.

(b) No, Sir.

AGE-LIMIT FOR 'Y' CADETS.

1401. ***Mr. S. G. Jog:** (a) Is it a fact that the age-limit for the Indian Army cadet has been fixed as 25 years?

(b) Is it also a fact that all the 'Y' cadets who were selected by the Interview and Record Board in June, 1931, were between the ages of 18 and 20?

Mr. G. R. F. Tottenham: (a) and (b). Yes.

*Recommended by Commanding Officers and Brigade Commanders for admission to the Indian Military Academy in October, 1932.

WAITING OF 'Y' CADETS FOR NOMINATION TO THE INDIAN MILITARY ACADEMY.

1402. *Mr. S. G. Jog: (a) Will Government please explain if it is their policy to nominate cadets to the Indian Military Academy when they are nearing 25 years of age?

(b) If so, is it a fact that every "Y" cadet mentioned above will have to wait for about five years before he can be nominated?

(c) Is it a fact that outsiders aged about 23 or 24 are enlisted as ordinary soldiers and, after completing some training, get nomination on the plea that they have no more chances on account of becoming over age? If so, does it not affect the nomination of regular 'Y' cadets?

(d) Is it a fact that one Pritham Singh who joined the Army as an ordinary soldier in November, 1931, was selected as a cadet for the Indian Military Academy during the October, 1932, term? Will Government state whether he was then over 25 years of age?

Mr. G. R. F. Tottenham: (a) and (b). The policy is to select those cadets who have had a full opportunity of demonstrating their powers of command and leadership, military knowledge and personality by actual experience in the ranks. Suitable cadets are not necessarily kept back until they are nearly 25 years of age, but, other things being equal, preference is naturally given to those who are approaching the age-limit.

(c) The answer to the first part of the question is in the negative. The second part does not arise.

(d) The answer to both portions is in the affirmative. The case of Pritham Singh was altogether exceptional. He was advised by the military authorities to enlist in the Indian Army with a view to obtaining a cadetship, before it was decided that no exceptions would be permitted to the rule regarding the age-limit of 25 years. He also gave up his civil employment in order to enlist. It was therefore decided that he must in common fairness be considered for a nomination, if recommended by the military authorities. His selection for a nomination was, however, due entirely to his own merits.

Mr. M. Maswood Ahmad: Will the Honourable Member be pleased to enquire from the department concerned why the letter "Y" is used for this purpose, and lay the answer on the table?

Mr. G. R. F. Tottenham: I think the letter was selected merely as a convenient symbol, and there is no other significance in it than that.

Mr. M. Maswood Ahmad: Will the Honourable Member be pleased to enquire and satisfy himself?

Mr. G. R. F. Tottenham: I am satisfied.

Mr. B. V. Jadhav: Are there any "W", or "X" or "Z" cadets?

Mr. G. R. F. Tottenham: Not that I am aware of.

RECRUITMENT FOR THE INDIAN MILITARY ACADEMY.

1403. *Mr. S. G. Jog: (a) What are the rules for the recruitment for the Indian Military Academy?

(b) Is it a fact that no condition of passing the Indian Army Special Certificate Examination was laid down in the terms offered to 'Y' cadets specially enlisted?

(c) If so, will Government please state why the 'Y' cadets were made to appear in the Indian Army Special Certificate Examination?

(d) Are any exceptions made in respect of this procedure or in regard to the passing of the Indian Army Special Certificate Examination?

(e) Have any unqualified candidates been recruited for the Indian Military Academy for October, 1932, term without passing the Indian Army Special Certificate Examination?

(f) Is it a fact that the Indian Army Cadet Indar Singh was not recruited through the agency of Interview and Record Board of the Army Entrance Examination, and that he has not passed the Indian Army Special Certificate Examination? Is it not essential for every non-commissioned officer to pass that examination before getting a nomination to the Indian Military Academy?

Mr. G. R. F. Tottenham: (a) Copies of the Regulations governing admission to the Indian Military Academy are in the Library of the House.

(b) Yes, but it was made quite clear to them that they would have to reach a suitable standard.

(c) The possession of the Indian Army Special Certificate was made compulsory in order to secure a uniform standard of education and also to facilitate the task of selection.

(d), (e) and (f). There has only been one exception to the rule which is the case mentioned by the Honourable Member. Cadet Indar Singh was exempted from passing the Indian Army Special Certificate Examination, because he was qualified in every other respect and had actually on two occasions qualified in the written papers at the open competitive examination.

PREFERENCE IN THE SELECTION OF 'Y' CADETS TO THE INDIAN MILITARY ACADEMY.

1404. *Mr. S. G. Jog: Are Government prepared to consider the question of giving preference to those 'Y' cadets who were recommended by their respective commanding officers over other Indian Army cadets in selection for the next term of the Indian Military Academy?

Mr. G. R. F. Tottenham: No, Sir. Selection must be made strictly in accordance with the merits of each candidate.

INADEQUATE REPRESENTATION OF MUSLIMS IN THE CENTRAL STATIONERY OFFICE.

1405. *Mr. Muhammad Anwar-ul-Asim: (a) What is the total strength of the establishment of the Government of India, Central Stationery Office, including Stores, and how many of them are Muslims?

(b) What is the total number of Head Assistants and Assistants (Upper Division Clerks) there, and how many of them are Muslims?

(c) Is it a fact that there is not a single Muslim in the Store-Examiner's and Store-Keeper's Branches?

(d) If so, will Government state why Muslims were not recruited for vacancies there up till now?

(e) Is it because the non-Muslim Store-Keeper does not like Muslims to be appointed?

(f) What steps are Government taking in order to get a fair number of Muslim representation in this Office?

(g) Is it a fact that there are about 30 to 35 employees, Head Assistants, Assistants and Clerks, who have completed their full 25 years' service, and that there are many who have completed even 30 to 35 years' service?

(h) If so, have the authorities considered the question of retiring these men?

The Honourable Sir Frank Noyce: (a) 252, of whom 20 are Muslims.

(b) 28; none of them is a Muslim.

(c) Yes.

(d), (e) and (f). Recruitment to the Central Stationery Office generally is made according to the orders of Government regarding communal representation. In making appointments each branch of the Office is not treated as a separate unit. As appointments in the Stationery Store Section of the Office are made on the nomination of the Stationery Store Keeper who is responsible for losses which the persons appointed may cause, it is not possible to insist on communal representation in that Section.

(g) 28 men with over 25 years' service are employed in the Central Stationery Office; of these seven have more than 30 years' service.

(h) No; no occasion has arisen for compelling them to retire before they reach the age of superannuation.

POSTS SANCTIONED FOR THE OFFICE OF THE REGISTRAR OF JOINT STOCK COMPANIES, BENGAL, CALCUTTA.

1406. *Mr. Muhammad Anwar-ul-Asim: Will Government please state whether it is a fact that the Government of India have recently sanctioned five posts for the office of the Registrar of Joint Stock Companies, Bengal, Calcutta?

The Honourable Sir Joseph Bhore: Not recently. But four posts of temporary clerks on Rs. 40 per mensem each were sanctioned in April, 1931, and these are being continued. I may also mention that the recruitment for the Joint Stock Companies staff is purely within the province of the Local Government.

RECRUITMENT OF MUSLIMS IN THE SUPERIOR SERVICES UNDER THE VARIOUS PORT TRUSTS IN INDIA.

1407. *Mr. Muhammad Anwar-ul-Asim: (a) Will Government please state whether any, and, if so, how many Muslims are holding appointments in the superior services under the various Port Trusts in India, specially in Calcutta?

(b) Will Government please say whether the principle of Indianisation of the services has been accepted by the various Indian Port Trusts and, if so, how many Muslims have been appointed during the last two years in the superior services in accordance with this principle?

(c) Will Government please state whether any, and, if so, how many, applications, during this and the previous years, have been received by the Chairman, Port Commissioners, Calcutta, from Muslim candidates with British and other European qualifications for service in the Engineering and other technical departments under them?

(d) If the reply to part (c) be in the affirmative, will Government please state how their cases stand at present?

The Honourable Sir Joseph Bhore: The information asked for is being obtained and will, when received, be laid on the table.

LICENSED SHIPPING BROKERS IN THE PORT OF CALCUTTA.

1408. ***Mr. Muhammad Anwar-ul-Azim:** (a) How many shipping brokers with licences granted under section 24 (1) of the Indian Merchant Shipping Act are there in the Port of Calcutta and how many of them are Hindus and how many Muslims?

(b) Is it a fact that most of the seamen engaged on foreign-going vessels at the Port of Calcutta by these shipping brokers are Muslims? If so, will Government please say whether there is any Muslim shipping broker, and, if so, do Government propose to consider the desirability of granting a licence to suitable Muslims to enable them to engage or supply seamen on sea-going merchant ships in British India?

The Honourable Sir Joseph Bhore: (a) There are at present four licensed shipping brokers at Calcutta and all of them are Hindus.

(b) The reply to the first part of the question is in the affirmative. As regards the second part, the position is that under the revised system of recruitment now in force licensed shipping brokers are seldom, if ever, required to engage or supply seamen. Government have accordingly decided that fresh licences should not be granted.

APPOINTMENT OF MUSLIMS IN THE OFFICES UNDER THE COMMISSIONER OF INCOME-TAX, CALCUTTA.

1409. ***Mr. Muhammad Anwar-ul-Azim:** (a) What is the percentage of Muslim appointments in the offices under the Commissioner of Income-tax, Calcutta?

(b) Is it a fact that there is no Muslim clerk in the Head Office of the Income-tax Commissioner, Calcutta? If so, why? Are Government prepared to impress on the Commissioner of Income-tax the necessity for appointing Muslim clerks in the Head Office in Calcutta so as to bring their number to 33 per cent. of the total ministerial officers in the Head Office?

(c) Is it a fact that proportionately the clerks in the Head Office of the Income-tax Commissioner get more promotion as Examiners of Accounts, Assessors, etc., than the clerks in other offices subordinate to him? If so, are Government prepared to ask the Commissioner to appoint more Muslims in the Head Office?

The Honourable Sir George Schuster: (a) A statement is laid on the table.

(b) and (c). There is one Muslim clerk in the office of the Commissioner of Income-tax at present. The clerks in that office do get a higher proportion of promotions, as suggested. The Government are not prepared to issue instructions as to the percentage of the establishment in any particular office that should be drawn from any community.

Statement showing the percentage of Muslim appointments in the offices under the Commissioner of Income-tax, Calcutta.

				Percentage of Muslims.
I. T. Os. and A. I. T. Os.	..	..	..	25
Non-gazetted Executive Service—				
Examiners of Accounts	..	..	..	33½
Assessors	..	..	..	29
Bailliffs	..	..	..	16
Ministerial appointments	..	..	..	35·8

SHORT NOTICE QUESTIONS AND ANSWERS.

SEPARATION OF SIND FROM BOMBAY PRESIDENCY.

Seth Haji Abdoola Haroon: (a) Will Government be pleased to state whether the decision has been taken that Sind be not separated from the Bombay Presidency and constituted into a separate province?

(b) Will Government be pleased to state whether the principle of the separation of Sind from the Bombay Presidency has been agreed upon at the Round Table Conference?

(c) Will Government please state whether it is not a fact that according to the Brayne Report there is a deficit of about Rs. 80 lakhs in the case of Sind, whether it remains a part of Bombay or is separated from the Bombay Presidency?

(d) Is it not a fact that the additional cost, in the case of Sind being constituted into a separate province, is no more than Rs. 12 lakhs?

(e) Is it not a fact that representatives of the people of Sind have suggested ways and means of meeting the additional cost by voluntary taxation to that extent?

(f) Will Government be pleased to state whether the earliest opportunity will be taken by His Majesty's Government to announce the decision on the separation of Sind from the Bombay Presidency?

The Honourable Mr. H. G. Haig: (a) No such decision has been taken.

(b) The Sind Sub-Committee of the first Round Table Conference accepted the principle of the separation of Sind and directed that the financial issues be examined by an expert Committee. This investigation was made in 1931 by the Sind Enquiry Committee, and, at the second Round Table Conference His Majesty's Government accepted in principle the position endorsed at the first Round Table Conference that Sind should

be constituted a separate province if satisfactory means of financing it can be found. A conference of representatives of Sind, over which Mr. Brayne presided, was accordingly held during the summer to suggest means to overcome the financial difficulty.

(c) The Honourable Member has correctly stated the general conclusion to be drawn from the figures at which Mr. Brayne arrived in paragraph 23 of his report.

(d) Yes

(e) Yes

(f) The question of the method of dealing with the anticipated deficit in a separated Sind will be discussed by the Conference now being held in London when it is considering the subject of federal finance. His Majesty's Government hope to announce their final views on the question as soon as the discussions have been completed.

Mr. Lalchand Navalrai: May I know from the Government if at the First and Second Round Table Conferences, the minority community of Hindus in Sind were not represented?

The Honourable Mr. H. G. Haig: The Honourable Member is probably more closely acquainted with that than I am, but I am perfectly prepared to accept that statement if he assures me that that is the case.

Sir Muhammad Yakub: May I take it, Sir, that so far as separation of Sind is concerned, it is not inter-dependent on the settlement of the question of finance according to the announcement made by the Prime Minister in his decision on communal question?

The Honourable Mr. H. G. Haig: I do not think, Sir, the question was dealt with specifically in the Communal Award. The position, I think, is clearly stated in the answer I have just given. I think if the Honourable Member looks at that answer, he will see, the position is quite clear.

Mr. Lalchand Navalrai: Will the Honourable Member be pleased to state if it was not decided at the Round Table Conference that Sind will not be separated if it does not stand on its own legs financially?

The Honourable Mr. H. G. Haig: I think the proposition was made not in a negative but in a positive form—that Sind should be separated, if satisfactory means of financing it can be found.

Maulvi Muhammad Shafee Daoodi: Has the attention of the Government been drawn to Table II under the head "Provincial Forecast" contained in the Federal Finance Committee's Report, page 5, showing the future financial position of various Provincial Governments?

The Honourable Mr. H. G. Haig: I am not acquainted with that table myself.

Maulvi Muhammad Shafee Daoodi: Is it a fact that a deficit of 70 lakhs and another of 65 lakhs are shown as against Bihar and Orissa and Assam, respectively?

The Honourable Mr. H. G. Haig: I am quite prepared to take it from my Honourable friend.

Maulvi Muhammad Shafee Daoodi: The third question arises on the same point. Is the Honourable Member aware that the Province of Bihar and Orissa was allowed to start with no contribution in view of its especially bad financial position, which fact is observed by the Federal Finance Committee in their Report, paragraph 78, page 21?

The Honourable Mr. H. G. Haig: It may be so, Sir.

Mr. Gaya Prasad Singh: Is it not a fact that the province of Bihar and Orissa got no subvention from the Central Government?

The Honourable Mr. H. G. Haig: I do not quite see how that question arises on the answer I have given.

Mr. Lalchand Navalrai: Will the Honourable Member be pleased to state that the majority community as well as the minority community in the Brayne Committee showed all avenues of bringing round the deficit and were not able to do more than what Mr. Brayne found out?

The Honourable Mr. H. G. Haig: The position is as I have just explained. The question asked was whether it was a fact that according to the Brayne report there is a deficit of about 80 lakhs in the case of Sind, whether it remains a part of Bombay or whether it is separated, and the answer was that that was the conclusion. Then, in addition to that deficit which will remain in any case, there was the additional cost of separating Sind which was calculated to amount to 12 lakhs and it is a fact that the representatives of the people of Sind have suggested ways and means of meeting that additional cost by voluntary taxation.

Mr. Lalchand Navalrai: Does the Honourable Member know that there is a difference between the deficit found out by the Brayne Committee and that found by the Irwin Committee? The latter Committee estimated the deficit at one crore and 10 lakhs and also said that the deficit will not be reduced up to 1963. The Brayne Committee shows a little difference. Have the Government of India considered the difference between these two Committees?

The Honourable Mr. H. G. Haig: Mr. Brayne had before him the conclusions of the first Committee and gave his reasons for arriving at different conclusions.

Mr. Lalchand Navalrai: I am asking whether the Government of India have investigated into it and given its opinion on it?

The Honourable Mr. H. G. Haig: As far as I am aware, the Government of India are prepared to accept the estimates of Mr. Brayne's report.

Maulvi Muhammad Shafee Daoodi: In regard to meeting the deficit in the provinces, is the Honourable Member aware that the Federal Finance Committee observe this: "We have considered other proposals which might, to some extent, conceal the realities of the situation, but it seems better to state frankly that the only method of relieving deficit provinces is to spread the charge over the other provinces"?

The Honourable Mr. H. G. Haig: The Honourable Member brings out the point which I have already indicated in my answer—that this question of deficit provinces is a general one and it is going to be discussed by the Round Table Conference as part of the general problem of Federal Finance.

Mr. M. Maswood Ahmad: Are Government aware that at Allahabad the Hindus have agreed to the separation of Sind unconditionally about finance?

The Honourable Mr. H. G. Haig: I am not aware that the agreement was unconditional. I have not read the agreement very carefully, but it seemed to me to run to some length and I imagine there were a number of conditions attached.

Mr. M. Maswood Ahmad: I referred to conditions about financial deficit.

The Honourable Mr. H. G. Haig: I should be glad to hear from the Honourable Member what was said about finance.

Seth Haji Abdoola Haroon: Is the Honourable Member aware that last February, in the Bombay Council, the Honourable Sir G. Pradhan stated very clearly in his Budget speech that the deficit in the Bombay Budget at present, as Sind was with the Bombay Presidency, was about 80 lakhs, that if Sind was separated from Bombay, Bombay would be relieved of that 80 lakhs deficit from her Budget and that if Sind continued to remain with Bombay, then he suggested that the Government of India should make some different financial arrangement with the Bombay Government?

The Honourable Mr. H. G. Haig: No doubt, Sir, the position is broadly as indicated by the Honourable Member that if Sind remains with Bombay, 80 lakhs will have to be found somehow from the Bombay finances, which otherwise they will escape.

Dr. Ziauddin Ahmad: We are considering the possible sources of income in future. Was the question of the expansion of the port of Karachi considered, because this is really a very important source of future income?

The Honourable Mr. H. G. Haig: I have no information on that point, Sir.

Seth Haji Abdoola Haroon: Is the Honourable Member aware that in his report Mr. Brayne says that from 1944-45 Sind will become a self-supporting province on account of the revenue from the barrage scheme?

The Honourable Mr. H. G. Haig: It is certainly anticipated that when the barrage scheme has got into full working order, it will be very profitable and will relieve the finances of Sind.

Sir Muhammad Yakub: Have Government considered the question of amalgamating Baluchistan with Sind, and what will be the effect on the financial position of these two provinces when they are amalgamated?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Order, order. That question does not arise on this issue.

Mr. Lalchand Navalrai: Is it not a fact that Lord Russell gave it as his opinion that Sind could be separated provided it stood on its own legs? Have the Government of India or the Government of His Majesty made any definite pronouncement contrary to that declaration?

The Honourable Mr. H. G. Haig: I have nothing to add to the very full statement I have already made on that point.

Dr. Ziauddin Ahmad: In adjusting the financial arrangements between Sind and the Government of India, will the Government consider as to who would be responsible for the extravagance of the construction of this barrage canal—the Government of India, or the Bombay Government?

The Honourable Mr. H. G. Haig: I am not aware what the Honourable Member refers to when he mentions "the extravagance of the construction of this barrage canal".

Maulvi Muhammad Shafee Daoodi: Are Government aware that Mr. Brayne, the Chairman of the Sind Conference, unnecessarily rejected the proposal of some of the members of the Sind Conference to levy a terminal tax in Sind, while the Federal Finance Committee Report in paragraph 86 says in the case of Assam:

"a possible further source of revenue should be a terminal tax the yield of which is estimated by the Provincial Government at about 20 lakhs,"

which would wipe off much of the deficit of Assam?

The Honourable Mr. H. G. Haig: I am not sure whether the Honourable Member is anxious that taxes to an unreasonable extent should be piled on the inhabitants of Sind. I have already stated that the members of the Committee, over which Mr. Brayne presided, have suggested ways and means of meeting the whole of the additional cost, and that being so, I do not know that there is any particular obligation on them to meet charges over and above that.

Mr. Lalchand Navalrai: Does the Honourable Member know that in the Brayne Committee the suggestion was made that the assessment of land revenue should be increased specially by one anna in the rupee when the majority community had declared several times that they cannot pay any more assessment and that such a suggestion has also been accepted by Mr. Brayne?

The Honourable Mr. H. G. Haig: I understand that the proposals made by Mr. Brayne were those accepted by his Committee.

Mr. Lalchand Navalrai: But the majority community consisted of seven men and there were three men from the Hindu community. Mr. Brayne accepted the opinion of those seven men—the majority community members. The Hindus never agreed to that.

The Honourable Mr. H. G. Haig: No doubt he accepted the opinion of the majority of the members of his Committee.

CONSTITUTION OF ORISSA AS A SEPARATE PROVINCE.

Mr. Bhupat Sing: (a) Will Government be pleased to state whether the decision that Orissa be not constituted a separate province has been taken?

(b) Is it a fact that the principle of a separate province for Orissa was agreed upon at the previous Round Table Conferences?

(c) Is it a fact that the Boundaries Commission has recommended that there are no financial difficulties in the constitution of Orissa as a separate province?

(d) Will the subject be discussed again at the Third Round Table Conference and ultimate decision taken therein? Has any representative from Orissa been invited to this Conference? If not, why not?

(e) Are Government aware that popular opinion in Orissa is very strong in favour of a separate province?

(f) Have Government considered the advisability of seeking the opinion of the Assembly by allotting a special day in this Session for discussion of the subject?

The Honourable Mr. H. G. Haig: (a) No such decision has been taken.

(b) The principle of the separation of Orissa was not in terms accepted at the last Round Table Conference. The exact position was stated in the opening sentences of the Reforms Office Resolution of the 18th September, 1931, No. F-12/VI/31, announcing the appointment of the Orissa Enquiry Committee in which it was stated that:

"the constitution of a separate province of Orissa was not made the subject of separate investigation by the Round Table Conference or any of its Sub-Committees. But the matter was not overlooked. Some discussion took place at a late stage in the Committee of the whole Conference in which, though the claims of the Oriyas were not expressly endorsed, no delegates spoke against them."

(c) No. The Honourable Member's attention is invited to Chapter II of the Orissa Committee's Report.

(d) It may be anticipated that the question will arise in connection with the discussions on Federal Finance at the Conference now being held in London. No delegate has been sent specifically to represent Orissa, but the Honourable Member is doubtless aware that one of the delegates is an Oriya.

(e) Government are aware of Oriya feeling on the subject.

(f) Government do not think it necessary to allot a special day for the discussion of the question.

Mr. B. N. Misra: What is the opinion of the Government of India now as to the point whether a separate province should be constituted or not?

The Honourable Mr. H. G. Haig: I am afraid I am not in a position to express the opinion of the Government of India.

Mr. B. N. Misra: What have the Government of India recommended in their Despatch to the Secretary of State?

The Honourable Mr. H. G. Haig: I have just said that I am not in a position to express the opinion of the Government of India.

Mr. Amar Nath Dutt: Sir, in view of the insistent demand from various provinces for separation, will Government see the wisdom of either reverting to the distribution of provinces as it was before the Partition of Bengal, or of having a distribution of the provinces according to a linguistic, ethnological and geographical basis?

The Honourable Mr. H. G. Haig: Sir, in these constitutional discussions, we have to face a very large number of problems. Among those problems are the questions of the constitution of two new provinces which have been discussed this morning: and I would suggest that we do not complicate matters further by embarking on a complete re-distribution of the provinces of India.

Mr. M. Maswood Ahmad: Have the Government of India made their recommendations about the separation of Orissa to the Home Government?

The Honourable Mr. H. G. Haig: I do not think that the final views of the Government of India have yet gone to the Secretary of State.

Mr. Amar Nath Dutt: Will not the constitution of a Boundaries Commission put a stop to all these complications?

The Honourable Mr. H. G. Haig: It might also put a stop to the constitution.

Mr. S. C. Mitra: Is it the intention of the Government of India to create further deficit provinces, because of the fact that there are already several deficit provinces?

The Honourable Mr. H. G. Haig: No, Sir. These questions of the distribution of the financial resources of India are no doubt very difficult,—the financial resources as a whole being somewhat inadequate.

THE CRIMINAL LAW AMENDMENT BILL—*contd.*

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Consideration of the Bill, clause by clause, to supplement the Criminal Law as reported by the Select Committee.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I move;

"That clause 2 of the Bill be omitted."

Clause 2 runs thus:

"Whoever wilfully dissuades or attempts to dissuade the public or any person from entering the Military, Naval, Air or Police service of His Majesty shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

And then there are two Exceptions. My purpose in moving the deletion of this clause is that it is absolutely unnecessary and that it will be

[Mr. S. C. Mitra.]

useless and ineffective in operation. We wanted to know, from the time this Bill was announced, if there were real cases and if there was any urgent necessity for having a provision like this. We have failed to get any definite information so far as to in how many cases, Military, Naval, Air or Police service, men in His Majesty's service have actually been dissuaded or attempts have been made to dissuade them. I shall certainly be glad to revise my attitude if, later on, the Honourable the Home Member can put facts and figures before this House to justify the inclusion of such a clause. In that connection I shall be glad, now that the Ordinance embodying the substance of this clause has been in operation for more than 11 months, if the Honourable the Home Member will give us, province by province, the number of cases, under each of the categories, Military, Naval, Air or Police, in which men have been dissuaded or the cases where attempts have been made in this direction. I should also like to know the number of prosecutions, convictions and the sentences awarded, so that the House may be in a position to judge the matter for itself. I do not think that we are here called to legislate for all eventualities or imaginary cases that may arise in the future. One strong ground has been that the whole Bill is intended against Congress activities. So far as I know, there is no resolution of the Congress where it has been urged on the Congressmen to dissuade people from joining the Military, Naval, Air or Police services in recent times. I remember, in 1921, when the non-co-operation movement was first launched, there were provisions for five-fold boycott, and public servants were asked to boycott public services, not only the services mentioned in this clause, but all services. I attended the last Session of the Congress at Amritsar and I know it for a fact that only one item of boycott, namely, the boycott of the Legislature, was accepted and the other four boycotts, namely, the boycotts of Courts, schools and public services were not adopted. After that, there was only one more Session held of the Congress at Karachi in which no other Resolutions were passed except the one relating to the five-fold boycott. Since then, Government have, in their wisdom, forbidden the Congress to hold their Sessions and thus there was no chance for the Congress to revise their opinion. So, even from this narrow standpoint that the Congress has adopted or is likely to adopt any such boycott, I contend that there is no necessity for such a legislation. I do not know, Sir, with what object this clause has been put in the very forefront of the Bill. It is meant only to prejudice the outside public that Indians have become so obtuse that there are regular attempts to dissuade them from entering the Military, Naval, Air or Police service. If a case is made out that there is a regular or persistent attempt to dissuade people from joining these services, I shall be really the last person to oppose it. But, I think, in these days of unemployment, if the Honourable the Home Member is anxious to enlist a large number of public servants in any of these services, there will be no dearth of men. On all these grounds I think that this clause is superfluous and unnecessary. It will be used merely to oppress the people under cover of this legislation and it will be of no other use. With these few words I move for the deletion of this clause.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

c. "That clause 2 of the Bill be omitted."

Mr. T. N. Ramakrishna Reddi (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I very rarely differ from the opinions expressed by my Honourable friend, Mr. Mitra, but in this respect I have great regret in differing from him. In this case, the Government have entered into the real Swadeshi spirit, because they want the whole Military, Naval, Air and Police services to be manned by Indians and that is exactly what our patriots have been fighting for all these years. We want the whole Military to be manned by Indians and also the Naval and Air forces and, that being the case, I do not see any reason why my learned friend should oppose such a salutary clause. Of course, the Government have introduced this clause unwittingly, because they really wanted to introduce a clause to punish boycott of any public service or any public servant, but unwittingly they have introduced this most salutary clause. I do not see any reason why we should oppose it and, on this ground, I oppose the amendment.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): Sir, I am very sorry that my friend, Mr. Reddi, is under a misapprehension. He has seen in clause 2 certain words which do not occur there. In fact if those words were there, I would have also joined him in his praise for the Honourable the Home Member, namely, that

12 NOON. by enacting this clause the Government intend that all Indians should be taken in the Military, Naval, Air and Police services. As for the Police service, we know that in the subordinate ranks, no foreigner is available and, therefore, Indians are taken. As for the Naval, Military and Air forces, my Honourable friend thinks that the enactment of this clause will compel the hands of the Government to enlist only Indians and not foreigners. If that be his idea, I submit, considering the policy pursued by Government so long, we are sure that his optimism is wholly unfounded. In fact, if there were words to that effect and if foreigners were excluded, I would have wholeheartedly supported my Honourable friend, Mr. Reddi. The clause, as it stands, runs:

"Whoever wilfully dissuades or attempts to dissuade the public or any person from entering the Military, Naval, Air or Police service of His Majesty shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

Now, so far as regards the Military, Naval or Air forces, I would have welcomed a provision like this:

"whoever wilfully dissuades Government from enlisting Indians in these services",

and certainly such a provision would have been most welcome to us. We know full well that Indians have no position in the Military, Naval and Air forces and that in the police they enjoy only a subordinate position. As the Honourable the Mover of the amendment has contended, up till now no occasion has arisen to enact a clause like this in a Bill to supplement the criminal law of the country, we want specific figures to be impressed with the real necessity for a clause like this. That being so, I am sorry that I have to disagree with my Honourable friend, Mr. Reddi, and support the amendment of my Honourable friend, Mr. Mitra.

***Mr. S. G. Jog** (Berar Representative): Sir, to start with, I should like to make it clear that in the long discussions that we had both at Simla as well as on the floor of this House here, when the Bill was under

[Mr. S. G. Jog:]

consideration, I kept a sort of discreet golden silence for reasons which probably I leave it to you, Sir, to imagine. I should like to say that I had the good fortune or, I may call it, the misfortune of working on the Select Committee and, if I were to speak as to what happened in the Select Committee, I would have landed myself in troubles, either I would have been compelled to justify the action of my Honourable colleagues or I would have been compelled to justify my own action. I, for one, thought it better not to take any part in those discussions and not to say one word or other as to who was in the right and who was in the wrong. I wanted to drop a curtain over the whole affair which, according to some Honourable Members, proved to be the tragic part of the Select Committee proceedings.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Honourable Member is speaking on the amendment to omit clause 2.

Mr. S. G. Jog: I was just now 'explaining, Sir, that I had no opportunity of giving expression to my feelings in the matter. I will now make some observations on the motion before the House. When clause 2 was under discussion in the Select Committee, we took a very long time, and straightaway we put the question to the Honourable Member in charge as to what was the necessity for this clause and whether they had any cases to prove that attempts were made to dissuade people from entering any of the services referred to in clause 2. The Honourable the Home Member was not in possession of any of the facts which will justify the legislation of a clause like this in the Bill. He took a long time to find out some material and, after all, he was not able to produce any material. However, when the matter was again being discussed, this matter was brought to the notice of the Honourable the Home Member and he promised to collect some material and place it before the House. Probably in his reply he may produce that material, but, up till now, at least, we are in the dark as to what that material is. We think that this is an imaginary grievance for which the Honourable the Home Member wants a provision to be made in the Bill. So far as we know, if anybody can be charged with dissuading people from entering the Military, Naval, Air and Police forces, it is the Government itself. I would charge the Government with putting obstacles and unnecessary restrictions in the way of Indian youth who are so anxious to join the Military, Naval and other services. If anybody is responsible for dissuading these young men, I think it is the Government. Under these circumstances, I submit that it is not the duty of this Legislature to provide against any imaginary evils, unless the Honourable the Home Member has got concrete cases of sufficient number to show the existence of such evils so that the House may vote for enacting a clause like this in the Bill. So long as the Honourable the Home Member is not in possession of the facts, any such piece of legislation, to my mind, is unnecessary. I should like to draw the attention of the House to the fact that in introducing this Bill the Government are practically trying to have something more than what was given in the Ordinance also. I should like to draw the attention of the House to clause 25 of Ordinance No. X of 1932, which says:

"Whoever dissuades or attempts to dissuade any person from entering the Military or Police service of His Majesty shall be punishable with imprisonment which may extend to one year, or with fine, or with both".

I do not find the words "Naval and Air forces" here and, while introducing this Bill, the Government are trying to make an improvement on what was in their Ordinance and they want to include Naval and Air forces also. In a way the Government are going beyond the purpose of the Ordinance. They have added two Exceptions, but, in view of the fact that there is no necessity for any such provision, I think the whole clause should be deleted. In the Select Committee meetings, we tried our best and, to some extent, we succeeded in compelling Government to meet our views, but, at the same time, the Government were stiff, and we were not able to carry many of our points. I am not going to consider the question whether the principle of the Bill has been accepted by the House or not accepted by the House. I must say that the Bill, even after it has emerged from the Select Committee, has still many defects and is wanting in several respects and it is the duty of the House to get those defects corrected. I would, therefore, strongly advise the Government that, in view of their all-pervading nature and as this side of the House thinks that the Bill is still capable of many improvements, I hope the Government, seeing the weakness of this side, would not be stiff. As there are many more amendments which are likely to improve the provisions of the Bill, I hope the Government would help this side of the House in effecting the necessary improvements in the Bill on the lines suggested by us. With these words, I support the amendment moved by my Honourable friend, Mr. Mitra. I think this clause is quite unnecessary and ought to be deleted. It is a question as to how far the Government require powers and, having conceded some powers to Government to put down the civil disobedience movement, we have to see whether the other powers asked for are necessary, and whether they come within the purview of that ideal which they have got in view. I, for one, am constrained to think that this clause 2 is unnecessary and that Government should not burden this emergency legislation with such unnecessary provisions to combat an imaginary evil. I wholeheartedly support the amendment moved by my Honourable friend, Mr. Mitra.

Hony. Captain Rao Bahadur Chaudhri Lal Chand (Nominated Non-Official): Sir, belonging as I do to a district which supplies a very large number of recruits to the Army, which supplied 25,000 recruits during the war, and from which there are about 8,000 men at present actually serving in the Army, I think I should be failing in my duty if I were not to give an opinion on this clause. One of the charges levelled against the Congress in previous years used to be that it represented only the educated classes, and that as Congressmen were all drawn from the urban areas, it did not represent the rural classes. Its representative character was always questioned. This was, as a matter of fact, true. Even in 1917, when the Lucknow Pact was signed, it was a pact between the urban Hindus and the urban Muslims. There was no Sikh representative there, because they are a rural community.

In order to refute this charge, the Congress began to spread its activities into the rural areas, and I remember that when there was a Session at Delhi, probably in 1918, they had a separate camp for peasants and tenants who were also given free feed and free tickets. Similar was the case at Amritsar. In this way they secured rural delegates and established a contact between the villagers and the Congress. Ever since then, Congress propaganda has been going deep into the villages and I have been told

[Rao Bahadur Chaudhri Lal Chand.]

by many reliable persons present in village meetings including retired Military officers, that in villages the Congress preachers generally say: "You villagers, you Military people, you are responsible for the slavery of India, because you supply men on Rs. 13 a month to fight against your own country". That is the general trend of their arguments. I must, of course, admit that at present there is so much unemployment in the country and that the economic conditions are so bad, that there are more recruits to be had than we require partly as the Ordinances are at work. But the class of recruits that we used to get in olden days are difficult to secure now. Go to any cavalry officer or any cavalry regiment, and you will find that it is now difficult to get recruits from the old families who used to supply recruits to the Army, or, in other words, members of good families who used to join the Army for the sake of *Izzat* are keeping back.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): May I know the reason why?

Hony. Captain Rao Bahadur Chaudhri Lal Chand: It is due to this propaganda and also partly due to the fact that the eyes of villagers have been opened and they find that the Civil services are more paying than the Military services, and, therefore, those who have got some education try to get into the Civil services rather than into the Military services.

Mr. B. V. Jadhav: So you mean to say that the Military service is not so attractive as it was before.

Hony. Captain Rao Bahadur Chaudhri Lal Chand: Military service at the top is attractive and should become much more attractive than before. If proof were needed, you can go and ask the Secretary of the Public Service Commission and he will tell you that, at the last selection for 12 vacancies, they had as many as 400 applications for the Indian Academy. The service at the bottom is not attractive.

Mr. B. V. Jadhav: That was for the King's Commission and not for the rank and file.

Hony. Captain Rao Bahadur Chaudhri Lal Chand: Yes, for the King's Commission.

That, Sir, is the chief ground on which they approach the Military classes. They always go and tell them that it is on account of the cheap recruits which the Military classes are supplying that the whole country is in bondage and slavery. This is the trend of the propaganda that is being carried on in the villages and it is very necessary that Government should not sit idle, but should get necessary powers to give effective punishment to those who resort to this propaganda among a population which is ignorant, illiterate and can be made to believe things which they ought not to believe. For instance, it was a common argument some time ago that Swaraj would come by 31st December of a certain year,

and villagers should also help materially in getting Swaraj. People used to come and ask if it were a fact that if they did not pay land revenue for a year or so, Government will come to a stop. Sir, this propaganda should not be allowed to continue among the masses, and I think the provision contained in clause 2 is very necessary. I, therefore, oppose this motion.

Mr. B. V. Jadhav: Sir, I have given notice of a similar amendment and I, therefore, whole-heartedly support the amendment moved by my friend, Mr. Mitra. But my reasons for the deletion of this clause are quite different. I do not think I shall yield to any one in my regard for the Army and I do recognise that for a well-settled Government a strong Army, Navy and Air force are absolutely necessary. And, therefore, it is the duty of every patriot to help Government in having a strong Army, Navy and Air force. But all these arms ought to be manned mostly by the nationals of the country. Up to this time the commissioned ranks of the Army and the Navy were not open to Indians at all; but, latterly, things have changed to a very small extent and the commissioned ranks have been opened to Indians by allowing them to hold a few commissions. The posts offered in the Army, for instance, are about 30 every term, out of which 15 are filled by direct recruitment and the rest by promotions in the ranks. In that way the Army has become more attractive and I do think that the fear expressed by my friend, Captain Lal Chand, will have no room, because boys of very good families, with an eye to a King's Commission, will join the ranks in larger numbers. But if there is a danger and if the propaganda that is carried on by the Congress and other unlawful bodies is to be stopped, it ought to be done by a separate Bill. But, as a matter of fact, nobody has yet shown that the propaganda that is carried on for dissuading young men from joining the Army is carried on by the Congress people or by the people who are preaching non-co-operation. The explanation given by Captain Lal Chand that people went into the villages and told the people not to recruit because it was a shame that Indians should accept wages and conquer the country and keep the country for a foreigner, that sort of preaching is not the Congress preaching at all. It may be the preaching of some unlawful persons or unlawful bodies, but the Congress is not at all responsible and it is not due to this non-co-operation movement. If such preaching is going on, it is by some other bodies

Hony. Captain Rao Bahadur Chaudhri Lal Chand: By Congress agents, I am sure: by agents who are in the pay of the Congress.

Mr. B. V. Jadhav: May I ask my Honourable friend whether such preaching has been started very lately or it is of very long standing? .

Hony. Captain Rao Bahadur Chaudhri Lal Chand: Yes; it has been going on for some time.

Mr. B. V. Jadhav: So it is not due to the present non-co-operation movement. If it is going on for some time—and I do agree that it ought to be stopped—then this provision ought to form a part of the Army Act and not of a Bill which is to replace the Ordinances

Hon. Captain Rao Bahadur Chaudhri Lal Chand: If they continue like this, it should come into in due course.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): If the Honourable Member wishes to yield, he should resume his seat: otherwise he should go on.

Mr. B. V. Jadhav: No, Sir; I do not want to yield: I remained standing.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Then please go on.

Mr. B. V. Jadhav: What I submit is, if this is required for the maintenance and discipline of the Army, it ought to form part of the regular Army Act in order to remain there for all time to come. But it has been inserted in this Ordinance Bill. My objection here is that the clause is very vague and it will lead to many abuses and, therefore, it ought not to be in this Bill. If Government think that it is necessary to have such a provision in the interests of the maintenance and discipline of the Army, then they should bring an amendment to the Army Act and have it there, but not in this Bill, because here it will lead to oppression and it may lead also to misuse of the provisions. We do not trust the police and other officers who will be very eager perhaps to run down obnoxious people under some clause or another and this provision, that they preached against enlistment in the Army or Navy or the Air force is a very easy charge to bring forward and it will lead to many abuses. Government have given their consent that this Bill should remain in force only for three years. Such a provision for three years only will not do for the discipline of the Army and it ought, therefore, to be deleted from this Bill. Even when Government are ready to show certain instances wherein some recruits have been dissuaded from entering one or the other of these services, I think that this provision in the Bill is not proper. Its right place is in the Army Act.

Sardar Sant Singh (West Punjab: Sikh): Sir, I stand to support the amendment moved by my friend, Mr. S. C. Mitra. My reasons for supporting this amendment are that I want to look at this clause from three points of view—the first, the strictly legal point of view, the second the point of view of a public worker, and third, the political point of view. Looking at it from the strictly legal point of view, I confess, I have not been able to follow the clause as it is worded. In the Select Committee Report I find that the word “wilfully” has been inserted in this clause probably to meet some objections of the Opposition. I tried to find out what would be the effect of this addition of the word “wilfully”. This addition of the word “wilfully”, in my opinion, would not provide any safeguard. If it means “deliberately”, then Exception 1 and Exception 2 become meaningless. If a man deliberately dissuades another or attempts to dissuade another from joining certain services, in that case he is brought within the purview of the clause in spite of these exceptions. But deliberate action is probably not represented by the word “wilfully”. The expressions commonly used in the Penal Code are two—with intention to cause a certain effect or with knowledge that a certain effect will in all likelihood be caused by a certain act of the culprit; but, in this clause, these expressions, intention and knowledge, have been avoided and the

expression "wilfully" is used instead. My own reading is that this word has been deliberately placed in the clause for the purpose of covering the criticism to which the clause would otherwise be open. In reality, this addition would not alter or limit the scope of this clause. It is too vague a term. The second expression which has been used loosely is "in good faith" in Exceptions 1 and 2. Exception 1 reads:

"This provision does not extend to comments on, or criticisms of, the policy of Government in connection with the Military, Naval, Air or Police services made in good faith and without any intention to dissuade from enlistment."

The expression "good faith" has been defined in section 24 of the Indian Penal Code as meaning "with due care and caution". If the words "with due care and caution" be substituted for the words "good faith" in this clause, it will read like this:

"This provision does not extend to comments, etc., made with due care and caution."

This will reduce this Exception to nullity. If the comment has to be made, how can it be made with due care and caution? What is the caution which has to be observed? But if the expression, on the contrary, means "bona fide" or with good intention or honestly, in which sense it seems to have been used, the Exception does provide some safeguard. Similarly, the expression "good faith" has been used in Exception 2. Here too the penal provision does not extend where the advice is given in good faith and for the benefit of the person advised. If I were to tell one of my friends not to enlist his son in the Army, I shall have to tell him: "I am afraid of giving you my advice, because it is an offence to say so; but I advise you that if you send your son there, certain consequences will follow". What will be the merit of that advice? Really this clause is so vaguely worded that any advice given, any suggestion made or any words dropped to any person with the idea of dissuading him from joining one of the services mentioned herein would bring a man within the scope of this penal provision. As far as I can understand the position, criminal law ought to be made very definite and very certain. The reason is obvious. The consequences of the criminal provisions are so very serious to the liberty of the person of the subject that the Legislature ought to be very careful in inserting a provision which does not convey the right idea to the person who reads that provision.

I submit, Sir, that this provision is simply uncalled for. My friends who have already spoken on this amendment have asked for facts which necessitate the enacting of a new offence of this kind, and I await an answer from the Honourable the Home Member on this point. But what I wish to emphasise is that such a provision will be used as a handle by unscrupulous candidates for public service to bring into trouble those from whom they happen to differ on political views. Unfortunately, in this country, public servants—I have to come into contact with a large number of them,—always look for their promotion by trying to earn the goodwill of their immediate superiors. One method employed for winning the goodwill of their superiors is to find out ways and means by which they can bring public movements into disrepute. The provision under discussion will certainly provide them with a handle though it may be enacted with the best of motives and in absolute good faith. Supposing a Congressman wants to criticise the judgment of a Magistrate, which is public property, and unscrupulous public servant can bring a case against

[Sardar Sant Singh.]

this Congressman on the ground that he tried to dissuade such and such a person from entering one of the services mentioned. Under these circumstances, I do not think I will be justified in recording my vote in favour of a measure which may possibly provide a handle for mischief.

Then, again, Sir, this is quite an unnecessary provision. After all, how many public servants are there who are willing to give up their posts today for their political views? How many applications are received when a vacancy is advertised? (*An Honourable Member*: "Crores.") Numerous applications are received. Therefore, what would be the effect of dissuasion on that? This Bill is intended to crush the civil disobedience movement which is regarded in some quarters as a form of revolutionary movement. Civil disobedience movement has been explained by its advocates as a movement of non-violence, as a movement of virtue, as a movement directed to set right palpable wrongs by adopting a course which is moral and disobeying laws which involve no moral turpitude. We know that a large majority of the people who have so far been tried for offences connected with the civil disobedience movement have had no criminality or immorality about them. If the new offence aims at putting down the revolutionary movement, non-violent or violent, it is sure to defeat such an object. Those who want revolution, would, on the contrary, be eager to join such services to affect the morale of such services in order to achieve their nefarious object. They would try to get in rather than to remain out.

An Honourable Member: Their character is verified.

Sardar Sant Singh: If their character is verified, as my Honourable friend says, then there is no necessity for such a legislation at all. It will be giving a handle to those whom you want to suppress. I, therefore, submit that this whole clause is unnecessary and impolitic and as such it will defeat the whole object you have in view. With these words, I support the amendment.

Mr. B. Sitaramaraju (*Ganjam cum Vizagapatam*: Non-Muhammadan Rural): Sir, I rise to support this motion. It would appear from a perusal of the clause that the worst offenders under this clause are the Government themselves, because we find that some of the finest Regiments in Madras have been disbanded and it is understood that some more Regiments are now under contemplation of being disbanded. Therefore, it would appear that a clause like this could be applied to the Government themselves because it can be reasonably shown that the Government are dissuading the public from entering the Naval or Military forces. But, in view of the fact, that that would not be done by this Bill and in view also of the fact that the Government have admitted that they have not got many cases to produce and justify that such has been the action of the public, I am constrained to think that there need be no reasonable apprehension on the part of the Government to come forward with a provision like this. With these few words I support the amendment.

The Honourable Mr. H. G. Haig (*Home Member*): Sir, I venture to agree with my Honourable friend, Mr. Reddi, that this is a salutary provision. I cannot, however, go with him when he says that it has been

introduced by the Government unwittingly. It has, in fact, been inserted in the Bill with due deliberation, and indeed, it seems to me strange that any one should suppose that any Government would acquiesce in such activities directed against the recruitment of essential services for the protection of the country. Consequently the objection that has been taken by Honourable Members this morning really centres on the point that there are no such activities, that this is an imaginary case that we have invented for the purpose in some obscure way of oppressing the people of India. It was said that, in the Select Committee when I was asked to produce evidence showing that these activities had been in operation, I was unable to do so, and it is suggested that since then I have been engaged in collecting the information which was not at that time available to Government. Well, Sir, the position really is this, that when this Bill was under preparation, we received the strongest representation from the Army authorities as to the necessity of including this clause. They assured us that there had been in fact a number of instances in which Congress agents had interfered with recruiting and it is a matter which they considered very serious and it was necessary to deal with it. At the moment that I was asked in the Select Committee whether I had any material, I had not got that material with me, but I have now a Note which in fact had been prepared previously which gives in some detail the facts on which the Army authorities based their representation.

Now, it has been said by my friend, Mr. Mitra, that there is not on record any Congress Resolution recommending this course of action, and it is, therefore, suggested that the Congress cannot be in any way instigating such activities and that, in fact, such activities cannot exist. Well, Sir, I would ask the House to reflect that there are various activities of the Congress which are pursued without the injunction of a special Congress Resolution. We are all aware that at one time, not very long ago, there was an epidemic of burning letters in post boxes. We know that even now from time to time the foolish practice is pursued of stopping trains by pulling communication cords. These things have not the authority of Congress Resolutions. Nevertheless, they are undoubtedly carried out under instigation from the Congress bodies.

I now come to the facts which justify the insertion of this provision, and I have to go back to the first civil disobedience movement in 1930. From about May, 1930, reports were frequently received from the recruiting officers that Congress agents were using every means in their power to prevent recruits from joining the Army. In some districts they achieved a certain degree of success—I would mention, in particular, Delhi and Garhwal. Instances were quoted in which they had compelled recruits to withdraw after they had actually joined the recruiting parties. The Congress activities in this direction continued throughout 1931. In spite of vigorous counter propaganda organised by the Army itself, the Army authorities did not consider these activities negligible. In 1932, an Ordinance was introduced which penalised these activities, and the effect was immediately apparent. No instances have recently been reported in which Congress agents have attempted to dissuade recruits from joining the colours, and, as long as this provision is in existence, we may anticipate that this particular attack on the Government will not make any headway.

It has been suggested by various Honourable Members that there is an unlimited supply of recruits, and consequently we need not be alarmed if a few recruits are in fact dissuaded. But, Sir, no Government can allow a

[Mr. H. G. Haig.]

movement of this sort to continue unchecked without serious risk of these activities affecting their credit among the very classes from whom they desire to recruit, and, if such activities were allowed to continue unchecked for some period, it might have very serious effects on the general temper of those classes on which the Army depends for its recruits.

I think I have said enough to convince the House of the necessity of this clause. (Loud Cheers.)

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question which I have now to put is:

"That clause 2 of the Bill be omitted."

The motion was negatived.

Mr. S. C. Mitra: Sir, I move:

"That in clause 2 of the Bill, for the word 'wilfully' the word 'maliciously' be substituted."

I know that by the addition of the word "wilfully" the clause has been much improved, and also an Explanation has been inserted to improve the clause. But my purpose, in substituting the word "maliciously", is that the onus may be on the plaintiff to show the malicious intent of the offender. In the Exception, it is the accused who shall have to prove good faith, and it is against the general principle of penal law that the accused should have to prove the absence of malice. The clause is too wide. It affects not only actual dissuasion, but any attempt to do so also comes under the purview of the law. So I want to substitute the word "maliciously" in place of the word "wilfully" as accepted by the Select Committee. Sir, I move.

Mr. Goswami M. R. Puri (Central Provinces: Landholders): I rise to support the amendment moved by my Honourable friend, Mr. S. C. Mitra. I find "wilfully" is a generic term and if the word "maliciously" is substituted, the whole clause will be acceptable to many of us. With these words, I support the amendment moved by Mr. Mitra.

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara: General): "I rise also to support this amendment moved by my Honourable friend, Mr. S. C. Mitra. When I spoke during the Simla Session on this Bill, speaking on clause 2, I pointed out that this clause had been framed on too wide a basis and I pointed out that if the wife of a man tried to dissuade her husband from joining the Military service, lest if he went to field service and was killed, she would be left a helpless widow, that persuasion exercised by a wife, though perfectly legitimate and lawful, would be made a punishable offence by this clause. No reply was given to me, but apparently the Select Committee saw the force of my argument and have made a slight change. They have now added the words:

"This provision does not extend to the case in which advice is given in good faith for the benefit of the individual to whom it is given or for the benefit of any member of his family or of any of his dependents."

This is a great improvement on what was in the original Bill, but the amendment has been made on a narrow basis. Suppose a man wants to take up Military service. A near relation of his, who is not a member of his family, nor is he entirely dependent on that man, but who receives

great assistance from him in life, he may be a nephew or a brother's son, and if he, in good faith, without any malice or any intention to injure the Government, gives that advice, he will be liable to be prosecuted under this clause. There is nothing in the wording of this clause which would prevent Government from making this an offence. It may be perfectly true that it is not the intention of the Government to take up such cases. What I say is, if you put in the word "maliciously" instead of "wilfully", it will have to be proved that the man was actuated by malice, and that will save him. With that object, I support this amendment.

The Honourable Sir Brojendra Mitter (Law Member): I oppose the amendment. This amendment, in my submission, is entirely misconceived. The Honourable the Mover of the amendment, Mr. Mitra, has assigned the reason for his amendment as shifting the onus from the accused to the prosecution. That is the only ground which he has adduced in favour of his amendment. The clause, as it stands, does impose upon the prosecution the onus of wilful dissuasion. By substituting the word "maliciously" for "wilfully" the onus will be on the prosecution as it now is under the clause, on the prosecution, to prove wilfulness. The difference is that the prosecution will have to prove malice instead of wilfulness. Mr. Mitra did not say a word on that subject and what that difference means. It is necessary, in view of this amendment as well as in view of several amendments which are to follow, that the exact legal position should be cleared up. I am afraid, in the course of the debate on this Bill, political considerations have completely befogged the legal aspect and I propose, with your permission, to go into the matter in some detail. It is well known to lawyers that wrongs or offences do not always import a malicious intention or, in the language of my friend, Mr. Sant Singh, the idea of criminality or immorality. It is well known that offences have been classified in the system of jurisprudence with which we are familiar under three heads. The first head of offences is intentional wrongs. The second head of offences is wrongs of negligence without any immorality or criminality, and the third, wrongs of absolute liability. This clause deals with wrongs of absolute liability. In the interest of the State or in the interest of public health or public morality, it is necessary that certain things should be prohibited. The mere disregard of that prohibition is a wrong. It is a wrong of absolute liability. All that need be shown is that in the interest of the State certain things cannot be done. If a man does it with the best intention in the world, he commits a wrong. With regard to enlistment, it is obvious to everybody that in the interest of the State enlistment should not be discouraged in any way. It is necessary for the safety of the State that enlistment should be free and unhampered and, therefore, it is necessary to lay down a law prohibiting discouragement of enlistment. Now, any disregard of that prohibition would be an offence. In support of what I have said I will only draw the attention of the House not to the *ipse dixit* of political lawyers, but of a jurist. I am quoting from an elementary book on jurisprudence by Sir John Salmond. In his book on Jurisprudence, at page 391, it is stated:

"It follows that in support of the requirement of *mens rea* wrongs are of three kinds, first, intentional or wilful wrongs in which the *mens rea* amounts to intention, purpose or design. Second, wrongs of negligence in which the *mens rea* assumes the less serious form of mere carelessness as opposed to wrongful intent and, thirdly, wrongs of absolute liability in which the *mens rea* is not required, neither wrongful intent nor culpable negligence being recognised as a necessary condition of responsibility."

[Sir Brojendra Mitter.]

Sir, the amendment seeks to take this particular wrong of dissuasion from enlistment from the third category into the first category. Mr. Mitra

1 P.M. did not say so in so many words, but that is the effect. Once we introduce the element of malice, then it becomes an intentional wrong and not a wrong of absolute liability. I shall presently show to what absurdity that will lead us. But it is necessary before I show that to explain the meaning of the word "malice" in law. Sir, the popular meaning of the word "malice" is not its legal meaning. In law, it has got a definite meaning. "Maliciously" has been defined as "an intention to do an act which is wrongful to the detriment of another".

Mr. Amar Nath Dutt: What is the name of the author? What book is that?

The Honourable Sir Brojendra Mitter: I will give it to you in a minute. I am not saying anything without authority.

Mr. Amar Nath Dutt: Beginning from Sir John Simon.

The Honourable Sir Brojendra Mitter: It is from Stroud's "Judicial Dictionary". I hope my Honourable friend has heard the name of that book.

Mr. Amar Nath Dutt: I have got a copy of that book in my hand.

The Honourable Sir Brojendra Mitter: I am very glad. Sir, the word "maliciously" is defined like this. "It connotes an intent to do a wrongful act.—'Maliciously' in legal sense means and implies an intention to do an act which is wrongful to the detriment of another." There are two elements in the word "maliciously"—the first element is the element of intention and the second element is that the intention is wrongful to the detriment of another. Now, if the word "maliciously" were used in this clause, how would the clause read? It would read like this:

"Whoever intentionally dissuades any person from enlistment to the detriment of the State."

Now, if "detriment to the State" is implicit in the dissuasion, then this clause would be meaningless. "Whoever intentionally dissuades another from enlistment to the detriment of the State." The "detriment to the State" is there in the dissuasion itself! Therefore it would be senseless to repeat it. Then, my friend, Mr. Mitra, wants to throw the onus on the prosecution. Onus of proving what? Onus of proving not only intention, but that there is detriment to the State. If one person is dissuaded, it may be said there are ten other recruits available. Therefore there has not been any detriment to the State. It is not the actual result, but it is the tendency which is material. If one person is dissuaded from enlistment, there is really no detriment to the State, because there are hundreds of other recruits available; but if this is repeated in a hundred cases, it is then and then only that the detriment becomes manifest. Therefore, in a case like this, detriment to the State cannot be proved in an individual case. When my friend, Mr. Mitra, said he wanted to throw the onus on to the prosecution, it was an insidious attempt to defeat the whole clause, because detriment to the State can never be

proved in an individual case. Sir, there is a further objection to the use of the word "malice" in this clause. As I have shown, it will read nonsense if you introduce the word "maliciously" there. I have shown that by paraphrasing. In support of that, I desire to draw the attention of the House to another passage in Stroud's book. Stroud says this:

"The word 'malice' seldom has any meaning except a misleading one. It refers not to intention, but to motive and, in almost all legal inquiries, intention as distinct from motive is the important matter. Another objection to it is that its popular meaning is not pure ill-will, but ill-will which it is immoral to feel."

Sir, it is for this reason that the word "maliciously" is seldom used by draftsmen now-a-days. It is to be found in many old books; I do not dispute that; but when these old Acts came before the Courts and the Courts had to interpret those Acts, they found that the word "malice" or "maliciously" was very misleading. So, Sir, my objections to this amendment are, firstly, that it would make a wrong of absolute liability into an intentional wrong, whereas the wrong with which we are dealing—dissuasion from enlistment—ought to be, in the interests of the State, an absolute wrong. My second objection is that the word "maliciously" in this clause would make nonsense of the clause. And my third objection is that by throwing the onus of proving malice on the prosecution, you will be defeating the whole object of the clause. My fourth objection is that the word "maliciously" is a misleading word. When we are enacting a new law, we ought to make it plain, clear and intelligible and not open to any ambiguity. Sir, there is one more word I need say and that is this. My Honourable friend, Sardar Sant Singh, objected to the word "wilful". He said it was too vague, it was meaningless, and all that. The answer was supplied by Mr. Mitra when Mr. Mitra started his speech by saying that the addition of the word "wilfully" had greatly improved this clause. Sir, I oppose this amendment.

Mr. Amar Nath Dutt: Sir, I have heard with great attention the learned arguments of the *ex-Advocate-General* of Bengal, but I regret very much that I am not convinced either by the reasons set forth by him or by the enunciation of legal principles with which he wanted to convince this House.

The Honourable Sir Brojendra Mitter: If you will permit me, Sir, I omitted to mention one thing and it is this—that the only other analogous section in the Indian Penal Code that I have been able to discover is the section dealing with abetment of desertion. Of course enlistment comes before a man is actually in the Army; desertion comes in the next stage. I want to draw the attention of the House to the analogous section of abetment of desertion. That is, Sir, section 135 of the Indian Penal Code. It runs thus:

"Whoever abets the desertion of any officer, soldier, sailor or airman in the Army Navy or Air force of the Queen shall be punished with imprisonment of either description", and so on.

So, again, it is mere abetment of desertion without intention, without malice and without any other motive. Thus in the Indian Penal Code itself, in the analogous section it has been made an offence of absolute liability and not an intentional wrong.

Mr. Amar Nath Dutt: Sir, I expected a far better exposition of the law of malice from an *ex-Advocate-General* who is now the Chief Law Officer of the Crown instead of depending upon this old Lexicon. It may be that people who have not the same status of an Advocate as my Honourable friend, the Law Member, inspite of the attempts which I have often made here and inspite of the strongest opposition of my Honourable friend, the Honourable the Law Member, to the distinction which he wants to perpetuate between an English Counsel and an Advocate enrolled in India and which will remain so long as my Honourable friend adorns the high office, may not see eye to eye with him. In fact, at one time during his temporary absence I wanted to have that Bill passed, but I found that his worthy lieutenant, Sir Lancelot Graham, prevailed upon the then Law Member to have it postponed in compliance to the desire of the permanent incumbent. Sir, I do admit that I was not a brilliant law student. I neither had a first class in my law examination nor I happen to be a member of an English Bar. But, whatever may be my knowledge of law, I can assure my Honourable friend over there that I knew the name of that book and the name of the author of that book before he was pleased to enlighten us on the subject. Now, Sir, from that book I shall quote to him the meaning of the word "malicious". It says: Malice is "A wrongful act done intentionally without just cause or excuse." I will lay special stress upon the words "without just cause or excuse". From a perusal of the note of my Honourable friends of the Select Committee, you will find, Sir, that they have observed as follows:

"In recasting the Bill, clause 13 has been combined with this clause. We have inserted the word "wilfully" and we have introduced additional safeguards."

Now, Sir, they congratulate themselves for having introduced the word "wilfully" and, further on, they proceed to say:

"We desire to protect, as far as possible, honest criticism made in good faith and have provided for this by our first Exception."

The first Exception runs thus:

"This provision does not extend to comments on, or criticisms of, the policy of Government in connection with the Military, Naval, Air or Police service made in good faith and without any intention to dissuade from enlistment."

I take it that it is the desire both of the Honourable the Home Member as well as of the Law Member that comments made in good faith and without any intention to dissuade from enlistment are permissible. That being so, let us see what my Honourable friend, Mr. S. C. Mitra, seeks to introduce in the clause by his amendment. He wants to introduce the word "malicious", and what is the meaning of this word that is to be found in the very book to which my Honourable friend over there has referred. Of course, he read from the latter part and I shall read from the first part. It says:

"'Malicious' means a wrongful act done intentionally without just cause or excuse."

I take it, Sir, that it was the intention of the Honourable the Home Member as well as of the Law Member that only such acts as dissuasion or persuasion done intentionally and without just cause will come under this clause and they have provided for a just cause in the Exception for which they congratulate themselves. That being so, I fail to find any

good reason for which the Honourable the Law Member could object to the substitution of the word "maliciously" for the word "wilfully". Now, Sir, the word "wilfully", we may take it, has a significance which is understood in ordinary parlance. There is not much difference in its significance in law. Then, Sir, I congratulate the Law Member for the very illuminating analysis from a book of a great jurist whose name will be remembered—I do not know whether it will be remembered with gratitude by any section of the community—in this country so long as the connection of this country lasts with England for the Commission over which he presided. Sir, we knew that Sir John Simon was a great advocate and recently we have come to know that he is also a great jurist from my Honourable friend, the Law Member.

The Honourable Sir Brojendra Mitter: I did not say Sir John Simon: I said Sir John Salmond.

Mr. Amar Nath Dutt: I beg his pardon, but the Calcutta University prescribes certain text books on Jurisprudence and I think my Honourable friend over there had to pass the same examination in Law as I did in the Calcutta University. I think, during our student days, we never heard the name of that great jurist and I challenge my friend to say that when he was a law student he also knew that Sir John Salmond was the author of a text book on Jurisprudence. He might have come into prominence only recently.

The Honourable Sir Brojendra Mitter: I have quoted from the eighth edition of that book.

Mr. Amar Nath Dutt: I do not know when the first edition of the book was published, but I would ask my Honourable friend to answer whether he really heard the name of that jurist when he was a student of law?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): I should like to know what bearing that has on the motion under discussion. Let us discuss the Bill which is now before us.

Mr. Amar Nath Dutt: I am told by my Honourable friend over there that salmon is a kind of fish and, if that is so, let the Honourable the Law Member have it. My Honourable friend has also referred to an analogous section in the Indian Penal Code, section 135, which deals with abetment of desertion. If the provisions are there, I submit, what further necessity there is for introducing this clause in the Bill under discussion. He ought to have supported the previous amendment of my Honourable friend, Mr. Mitra, for the deletion of the whole clause. In fact, I am convinced that the law of the country, the Criminal Law as it stands, does not need any very elaborate addition at the present time in order to meet whatever situation there may be in the country, and this clause, if not deleted, at least should be recast by omitting the word "wilfully" and substituting therefor the word "maliciously".

The Honourable Mr. H. G. Haig: I do not think I have anything to add to the learned exposition of law given by my Honourable colleague, and I certainly should not venture to step into the arena of legal arguments, as between him and my Honourable friend, Mr. Amar Nath Dutt,

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 2 of the Bill, for the word 'wilfully' the word 'maliciously' be substituted."

The motion was negatived.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President (The Honourable Sir Ibrahim Rahimtoola) in the Chair.

Mr. S. C. Mitra: Sir, I move:

"That in clause 2 of the Bill, for the word 'wilfully' the words 'without any reasonable cause' be substituted."

In moving this, I feel no diffidence though I know there are very few Members present on this side of the House as well as on the other side. I think it my duty to draw the attention of the House to all points where, I think, an improvement should be made in this very drastic Bill. This motion wants to say that when there are any reasonable grounds for a person, he should not come under the mischief of this clause. The Honourable the Law Member made it clear that no mischievous intention is necessary and when there is such a result of dissuasion there should be no escape from the provisions of this clause. I was thinking whether honest criticism, which may have the effect of dissuasion, should not be provided for as an Explanation. It may be that a public speaker, in addressing the general public, might say that it is derogatory for Indians to enlist in the Army so long as there is the racial discrimination of Indian officers being placed in charge of Indian Regiments alone and of European officers not being placed under them. The effect of some such speech may have resulted in dissuading some of the candidates from going in for higher Military service.

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Read the first Explanation which we have added in the Select Committee.

Mr. S. C. Mitra: I request my Honourable friend to read it more carefully instead of asking me to read it. Here it is said that even an intention to dissuade from enlistment will be punishable. My intention in making that speech may be to say that unless these derogatory conditions and racial discrimination that prevail in the Army are removed, Indians should not enter these services. Here it may have the effect of dissuading in an indirect way. But though it may have that effect, I want to put some such clause that if there is any reasonable cause for it, then he should not come under the provisions of these penal laws. So even after Government's unwillingness to accept the word "maliciously" for "wilfully", I think they may agree to substitute the words "without any reasonable cause" for the word "wilfully".

Sir, I move.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): Sir, I rise to support this motion of my friend, Mr. Mitra, which, I think, is a very reasonable one. Government have practically accepted the principle underlying this motion, namely, that mere dissuasion will not be sufficient to bring a person within the provisions of this clause. That is the reason why they have made two Exceptions. One is that if I am interested in any person and I dissuade him, that has been considered to come within the category of reasonableness. Mr. Mitra's amendment is that instead of the two illustrations, the word should be "reasonable" throughout. In this connection one may refer to the provisions of clause 7, where a similar provision has been made, where, in addition to the intention of dominating over the mind of any person, certain overt acts are given. In this case, no overt acts are necessary, because, as the Honourable the Law Member said, mere dissuasion should be considered an offence. His reference to section 185 does not help at all, as that is a more heinous offence, viz., I abet a man in deserting a service in which he has been working. "Abets", under the definition in the Penal Code, connotes, I think, also intention. Therefore, there should be an intention of causing that man to desert and, therefore, mere desertion has not been considered to be an offence. In this clause the Government go further. It says that mere dissuasion of a person or a section of persons who were likely to have been recruited for the Army or the Navy or for the Police must be considered to be an offence. But Mr. Mitra's proposition is that when there are reasonable grounds for dissuading a person, he should not be punished. I see no objection to this because, as I said before, the principle has already been accepted and embodied in the two Illustrations given under this clause. Sir, I support the motion of Mr. Mitra.

The Honourable Sir Brojendra Mitter: Sir, I oppose this amendment. The only ground on which Mr. Mitra has supported his amendment is that honest criticism in certain circumstances should not be made penal; and, by way of illustration, he gives the case of a public speaker who advocates dissuasion on the ground that racial discrimination exists in the Army, and he says, the effect may be dissuasion, but the motive is noble. Sir, here again is a confusion of thought. Criminal law takes no account of motive. It takes account of intention, and it is this confusion between motive and intention which underlies this amendment. If it is conceded that dissuasion from enlistment is an offence of absolute liability, then if you bring any exception of reasonable cause, you leave it at large. What is the reasonable cause? We have provided for two reasonable causes: that is to say, when a person, in the interests of the prospective recruit, dissuades him—that we consider to be a reasonable cause and we have provided for it in Exception 2. The other Exception is this: as regards racial discrimination or other matters of policy, if there be criticism, it is covered by Exception 1. Besides these two causes, what other reasonable cause there can be has not been indicated by either of the two speakers. So there is really no ground in support of the amendment. Sir, I oppose.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 2 of the Bill, for the word 'wiffully' the words 'without any reasonable cause' be substituted."

The motion was negatived.

Mr. Lalchand Navai (Sind: Non-Muhammadan Rural): Sir, my amendment is this. I move:

"That in clause 2 of the Bill, for the words 'dissuades or attempts to dissuade' the words 'or designedly deters or attempts to deter' be substituted."

My amendment is in two parts: one is that I want the word "designedly" to be introduced into this clause, and the second is that instead of the word "dissuade" I want that the word "deter" be substituted. The provisions of this Bill are admittedly drastic; it is admitted by Government that for this emergent occasion they stand for a very drastic measure. But it is a duty cast upon those, who want that such a drastic measure should be accepted, to see that all the rigour or severity of the clause is softened and, with that view, I submit that these amendments are being introduced. It is, therefore, very necessary to introduce some such words as would go beyond the word "dissuade" alone, which may mean giving of advice alone to make up the offence. That would soften the rigour of the clause. Otherwise, remember, the Government are giving this measure into the hands of the police and a mere word used in casual conversation or giving a private opinion whether a particular person should enter into any service or not would be misconstrued, twisted and turned. I submit that in the first place I do not agree with the Honourable the Law Member who lays down false premises first and then says that no safeguard is necessary. His interpretation is that it is *per se* a detriment to the State if only a man is dissuaded from entering a service. I submit that is absolutely wrong. If you are only giving advice, it would not be to the detriment if it is not done with a certain purpose or is due to a plan or an intention. The Honourable the Law Member fought shy of the word "malicious" to be incorporated in the clause; he perhaps thought that it would be very much to be proved before a conviction is obtained. But then one thing having been recognised that this Bill is going to be put on the Statute-book for the purpose of combating civil disobedience and for no other purpose, if the word "wilful" only is used it will not reflect the required purpose. The purpose for dissuading one may not be for the purpose of civil disobedience and still the man will stand convicted. Therefore I am suggesting a word lighter than "malicious" and having a meaning which would cover the very object of this Bill, and that is the word "designedly". The accused should have a plan for dissuasion and he should be one of those persons who is a supporter of the civil disobedience movement whom the clause should apply. A man who only gives advice or casually mentions his opinion may be caught in the snare. Therefore to protect such men I want that the burden of proof should not fall on them to prove that they did the act in good faith. This clause, as it is now worded, puts the burden upon the accused and turns the tables against him for mere advice. It is being urged that provisos have been added to the clause which would enable the accused to show that he had given that advice in good faith. I submit that that will be against the fundamental principles of the law of evidence. When a prosecution is launched, it is not that the prosecutor has simply to prove that the accused gave the advice: it must be proved that he did not stop at giving the advice, but that he did do some overt act to dissuade the will of the person so advised. The mere giving of advice may be taken by the police officer to constitute the offence in order to shove a man into a Court where he has to prove that he did not commit a crime: the burden

will be upon him to prove his *bona fides* and good faith. I, therefore, submit that the Treasury Benches, specially the Honourable the Law Member, upon whom there rests a great responsibility in this direction, should not merely ask for a blank cheque to be put in their hands and they should not reject reasonable amendments like these. We know their numerical strength: with the help of non-official Nominated Members, the officials and some other Members who are favourites of the Government, the Government can get this Bill passed in this manner; but it is a serious duty imposed upon the Government to see that they should not insist upon seeing this Bill passed even without a comma being changed. Therefore they should ponder and ~~ponder~~ which amendment should be accepted and which should not be accepted. Government are actually changing the burden of proof and that will be against all principles of law. Further, I submit that the word "dissuade" is very flexible and liable to be misused. Therefore there ought to be some safeguard and, for that safeguard, the Law Member should accept an amendment which tallies with some of the provisions which they have themselves used. I will explain why I use the word "deter". Now, deter is not mere advice. "Deter" would mean prevent. It will be not by a mere request, but by either observing a Dharna before him or by certain overt acts. Therefore, merely making a request or giving advice should not be treated as an offence. We find the same intention is expressed in clause 7. What does this clause 7 say? Clause 7 says this:

"Whoever with intent to cause any person to abstain from doing or to do any act which such person has a right to do, or to abstain from doing, obstructs or uses violence to," etc.

So there is the domination of one's will here, and there is an overt act. Why should such terms come under picketing only and not in this clause, I cannot possibly understand. Therefore, the word "deter" would include something more than mere advice. I would, therefore, submit that both parts of my amendments are very modest and should be accepted by the House.

Hony. Captain Rao Bahadur Chaudhri Lal Chand: I had no desire to take part in the discussion of this amendment, but certain remarks which have fallen from the Honourable Member who preceded me have compelled me to say a few words. Sir, it has been customary for the Opposition to get up at every opportunity and malign the poor Nominated Members. ("Hear, hear" from the Nationalist Benches.) It seems the Opposition are under a grave misapprehension. They must understand that the Nominated Members are as good a part of this Constitution as Elected Members. The present Constitution provides that there shall be so many Nominated Members in the Assembly, and therefore it is not by any favour of the Government or by connivance of the Opposition that the Nominated Members are sitting in their seats today. I may tell my Honourable friends opposite that the moment the present Constitution is changed, they will find most of the Nominated Members occupying the elected seats (An Honourable Member: "Question.") (Laughter), because, Sir, elected seats are not the monopoly of the Congress people. Now, what do we see here? Mr. Patel's successor is Mr. Amklesaria, whose sympathies with the Congress are too well-known to need special mention. This shows that the country is tired of them. Therefore, I would request my friends opposite that they

[Hony. Captain Rao Bahadur Chaudhri Lal Chand.]

should give up the practice of maligning each other. Everybody is here by right. Let the Constitution be changed and the Nominated Members will disappear at once.

Sir Muhammad Yakub: But most of them have vacated their seats.

An Honourable Member: But what is your opinion about the motion?

Hony. Captain Rao Bahadur Chaudhri Lal Chand: I need not say anything of the motion itself, because that has been very well discussed in the previous amendments. I oppose this amendment.

Sardar Sant Singh: Sir, I rise to support this amendment, though I find some difficulty to follow the wording of the amendment. The amendment says that in clause 2 of the Bill, for the words "dissuades or attempts to dissuade", the words "or designedly, deters or attempts to deter" be substituted. I have not been able to follow the significance of the word "or"; but I support the substance of the amendment as explained by the Honourable the Mover. My submission is that the clause, as it originally stood, has been explained by the Honourable the Law Member as denoting that the Government want that out of the three categories of crimes, namely, the intentional crime, crime due to negligence and the absolute liability for an act, it should fall in the third category, and, therefore, they have placed the expression "wilfully" there. I want to invite the attention of the Honourable the Law Member to the fact that originally when the Penal Code was drafted, the expression "wilfully" was used in section 39 of the Indian Penal Code, but, later on, that was dropped and the expression "voluntarily" was substituted in the Code. The expression "voluntarily" has been defined there. This is what it says:

"A person is said to cause an effect voluntarily when he causes it by means thereby he intended to cause"

But in the proposed Bill if the expression "voluntarily" had been used, one could have understood the position, because it would convey the meaning of the Penal Code. But that expression is avoided and no definition of the new expression "wilfully" is given.

Coming to my Honourable friend's amendment, he wants to substitute the words "designedly, deters or attempts to deter" for the expression "dissuades or attempts to dissuade". The amendment is certainly clearer and more definite. The amended clause could be applied with certainty on a given set of facts before the Court. We all know that dissuasion covers a mere advice without ascribing any conduct to the accused. If I walk with a prospective public servant and tell him "do not join such and such service", I can be brought within the purview of this clause,—but by using the word "deter" the offence will be committed if certain overt act, some definite conduct of the accused is proved. So far the Criminal Law in this land takes note of acts or omissions, but it has not given itself to punishing the people on mere statement except in defamation cases or other like offences. Here you want to create a new offence, and that, too, at an age when numerous candidates are available for a vacancy. But the Honourable the Home Member says that there is some prestige and credit for the public service and he wants to keep

it intact. I can understand the anxiety of the Government to keep the prestige and credit of the people who are already in public service, but why there should be so much desire on the part of the Government to protect those who intend entering the public service; this provision, as already submitted, Sir, will provide a handle to those who want to get into the public service. What are the conditions today? When applications are made for an appointment in the public service, we find very little space is given to the personal qualifications of the applicant for the job, but the political services rendered by the applicant or his family are narrated *ad nauseam*. This attitude is encouraged by the authorities and the applicants take full advantage of it and cater to their desires.

3 P.M. We, who are practising in the original Courts, know that people come forward to give evidence for the police in order to obtain chits, and these chits are used as qualifications for securing appointments in the public services. Here is given another chance to that class of people. I do not know how matters go on in other parts of the country, but, in the Punjab, you will find almost every headman carrying a book with him under his arms. In that book they get written, "This man came to see me. He seems to be desirous of serving the Government loyally. I recommend him to the other officials." (An Honourable Member: "The condition of the Punjab is quite different.") Now you are creating another offence by which you will get more marks for these kinds of people. If you really want to avoid the danger which, in our opinion, is only imaginary, but which you think to be real, you should at any rate have the decency of ascribing some act to the culprit before you punish him. Here there is only a statement which is being made punishable. If such a thing becomes a law, I do not think the administration stands to gain very much. The administration will be condemned by the public, which has already been brought to so much contempt by the over-anxiety of the administration to arm itself with repressive powers. Therefore, my view is that this is a very modest amendment and the Honourable the Home Member should accept it. I support the amendment.

Mr. Amar Nath Dutt: In supporting this amendment I am glad that we have not got to go to any *law lexicon* to find out the meaning of a particular word which has one meaning for the lawyers and another meaning for the layman. Here the amendment seeks to substitute for the word "wilfully", which has not been defined here nor has it been defined in any other Act in force at the present moment—be that as it may, there is no definition of the word "wilfully", and, therefore, my friend uses a word which any layman can understand, and it will also serve the purpose of the Government. I do not think that my Honourable friend, the Home Member, or my Honourable friend, the Law Member, will have any objection to its acceptance. I have no quarrel with the Nominated Members, and I sympathise with my Honourable friend, Captain Chaudhri Lal Chand, and I may say that we have more sympathy for Captain Lal Chand than with Mr. Lal Chand. Be that as it may, as a lawyer I expected Captain Lal Chand to support this amendment, but neither does he support nor oppose the same. On the whole, I think it will be acceptable to the Home Member and the Law Member, because there is no difficulty in having these words changed so as to make the meaning understandable to that body of officers who administer the Criminal Law.

[Mr. Amar Nath Dutta.]

in the mofussil Courts and hardly have any knowledge of law—I mean the Magistrates who have to administer the law, be they civilian Magistrates or Magistrates recruited in India. We know that they are too eager to put a meaning on certain words which would please the powers that be, rather than accept the ordinary meaning, nor do they care to understand the real import of the legal phraseology used. Over-zealous executive officers will not be able to put a meaning into the phraseology which the Legislature did not mean, and I hope the Home Member will be able to accept this amendment, knowing as he does the views of those who know the mentality of the executive officers in the mofussil.

The Honourable Sir Brojendra Mitter: I am very sorry I have to oppose this amendment, but I can assure my Honourable friend, Mr. Lalchand Navalrai, that my opposition to it is not based upon the assurance of a majority in the House. We have considered the wording of this Bill very carefully and the phraseology chosen was not haphazard nor designed to arm the executive with unnecessary powers. The amendment is that the word “wilfully” should be substituted by the word “designedly”.

Mr. Lalchand Navalrai: I have said “wilfully or designedly”. My idea is that “wilfully” means on purpose and “designedly” on an ulterior purpose. I want both these words. Both should remain.

The Honourable Sir Brojendra Mitter: One objection which has been taken to the word “wilfully” is that it is not defined in the Indian Penal Code. Therefore, the suggestion, I take it, is that there is ambiguity about it. Sir, the word “designedly” is not defined in the Penal Code either, so that the objection applies equally to the word “designedly”. Where an expression is not defined, you have to look to its ordinary dictionary meaning. That is the law. I consulted the Oxford Dictionary. “Design” means a “plan”, and “designedly” means “in pursuance of a plan”. Therefore, if you introduce the word “designedly” here, you have got to prove something in the nature of a conspiracy. Now, in the case of an absolute liability, if you are called upon to prove a conspiracy, you really defeat the purpose of that law. You may prove that a man goes about telling people not to enlist, but you may not be able to prove a conspiracy, that he is in league with somebody else to do that. We know from our own experience and from the facts which my Honourable colleague, the Home Member, placed before us this morning, that attempts were made during the last two years, before the Ordinance was promulgated, to dissuade people from enlisting. We want to stop that. If we are asked to prove a conspiracy, then the Legislature will deny to us the weapon which we want in order to fight this particular menace to the body politic.

Sardar Sant Singh: The object then is not to suppress the civil disobedience movement. If it were the object, then the plan or design would be that of the Congress.

The Honourable Sir Brojendra Mitter: That may be so, but my point is this. It will be difficult, almost impossible, to prove a conspiracy. We want a law which will be effective. If you make the law in such a way that it will not be effective, you might as well not enact it at all.

The other point which was taken by Mr. Lalchand Navalrai was that the clause, as it stands, might draw within its ambit a person who casually advises another not to enlist. I beg to differ from him. The word "willfully" clearly shows that he must do it deliberately and not casually or accidentally. If a man does a thing deliberately, it is then and then only that he will come within the mischief of the clause. Then he says: "Oh, 'willfully' is an expression which has been dropped in the Indian Penal Code and the word 'voluntarily' has been substituted in some section or other". I may refer my friend to at least two sections in the Indian Penal Code in which the word "willfully" still stands. They are sections 405 and 477-A. Why should the word "willfully" be substituted by the word "designedly"? All we are providing for is that if a man goes about deliberately dissuading people not to enlist, then he commits an offence of absolute liability. If you bring in either a plan or design or intention, then, in the language which I used this morning, you would be transferring the offence to the first category of intentional offences. That we are not prepared to do because, in our view, this is an offence which carries with it the germ of mischief. When a person is dissuaded from enlistment, that is lending his support towards the defence of the country, the mischief is there. We want to keep that offence under the category of absolute liability and we oppose any attempt to transfer it to the category of intentional offences. Then take the word "deter". It has been suggested that "deter" is a better word than "dissuade". Why is it a better word? Dissuade means "advice against". That is the dictionary meaning. "Deter" means discourage or hinder. If you accept the word "deter", it brings in not merely advice, but may bring in physical hindrance. You are unnecessarily introducing an ambiguity into the clause which is not there now and, therefore, my submission is that the word "dissuade" which is well known, should stand. Why change that and introduce a word which may bring in an element of ambiguity. Sir, I oppose this amendment.

Mr. S. O. Mitra: I think the amendment of my Honourable friend, Mr. Lalchand Navalrai, is an improvement on the one I myself suggested. To a plain and simple man the difference between dissuasion and deterring is simply this. In dissuading the speaker may succeed in inducing the other man to agree with his views, while deterring means that by some overt act or by any other way he may stand in the way of the man enlisting. So there is a clear meaning why the Mover of the amendment wanted to substitute these words. I support the amendment.

Mr. B. R. Puri (West Punjab: Non-Muhammadan): Sir, at this stage to speak on any amendment is practically flogging a dead horse. At the same time the elucidation of the law which has been made by the Honourable the Law Member prompts me to say just a few words as to the purely legal aspect of the question that he has propounded. It has been for the first time explained to us that the present offence is on par with a class of offences which are *per se* so pernicious that regardless of intention or knowledge or will or design, the act is *per se* of such a nature that in the interests of the State it should not be qualified or its effectiveness should not be encroached upon by any qualifying words of the nature of knowledge or intention or will or design. In other words, we have been seriously told that this offence is on par with offences of the nature of

[Mr. B. R. Puri.]

section 124A or section 121, namely, acts which by themselves are of such a heinous character, as for example, to wage war against the King, where no question of intention comes in. It is an offence which falls very rightly and legitimately in the category of offences which place an absolute liability on the subject. Whoever infringes that law cannot escape from the consequences of having broken that law on the ground that he had no such intention, design and that he did not do it deliberately. His intention would be absolutely immaterial. If that be the correct view, then might I ask the Honourable the Law Member how does he justify his two Exceptions which he has himself provided under this particular clause. The Law Member has stultified himself when, on the one hand, he says that we cannot afford to let the effectiveness of this clause to be impaired because, according to his lights, it is an offence of sufficient heinousness that an absolute liability must be imposed upon the person who commits that act. May I, in all seriousness, ask him, if he is serious in expounding that view, with what justification does he provide channels of escape which are the subject matter of his exceptions which provide that in certain cases an act which would ordinarily be an offence would not be an offence? In other words, if a certain set of circumstances are made out by an accused person, what, in the absence of those circumstances, would be a bald offence, would be removed from the category of that offence on account of those circumstances having been established in favour of the accused. In other words he thereby admits that that is not an act which places an absolute liability upon the offender. Sir, the two positions to my mind are inconsistent. Therefore I would expect my Honourable friend to clear the position. Sir, when propounding this proposition that they are compelled not to permit any qualifying words being imported into this provision by way of channels of escape because that it would alter the character of the liability, because according to them they say that it is an absolute liability and, therefore, by allowing any words to be imported into the clause, its effectiveness, they say, would be impaired, the position of the Government does not become sound. They have admitted that their argument is not a genuine argument, inasmuch as they themselves have shown that this is an offence which could be brought within the liability.

Now we do not conceal the fact that the object of all these amendments is to mitigate the rigour of this otherwise most unreasonable provision. Since we have not succeeded in throwing out this particular clause of this Bill, we are making such effort, as we are able to, with a view to reducing the rigour of this otherwise pernicious provision and all these amendments are intended to secure that object. Now it has been all along the case of the Opposition that we wanted that some sort of provision might be made under which this particular offence might be brought on a par with all other known offences, namely, in the sense that it should be placed upon the prosecution to establish the offence. Sir, we have rendered ourselves hoarse in trying to convince the Government, but our efforts have so far proved futile. Now, our friends across the floor of this House assure us that as long as the effectiveness of this provision is not impaired, they would be willing to meet us as far as they can. That is their position. The object which we had in our mind was that either intent or some other word which would place upon the prosecution the burden of proving the offence might be introduced into the Bill. They say:

"We are not going to agree to any suggestion of that kind, because if you take this offence from the third category into category No. 1, it won't do". If this is their difficulty, might I ask, for whose benefit you have provided this word "wilfully"? I could very justifiably ask the Government: "Was it really as a toy that it was provided, because there were children clamouring for it, and that in order to quiet them down, the Government have made an addition of the word 'wilfully'—because on your own word you admit that by introducing this word the effectiveness of the clause has not in any way been affected?" If that view is correct, then whether the Government added the word "wilfully" or eliminated it would not make the least difference. It is as good or as bad as if it did not exist. If it is not going to benefit an accused person, then, merely, in order to be able to say that we have made some sort of alteration, the Government cannot justifiably take any credit for themselves. As a matter of fact we have been waiting with a great deal of anxiety to hear one word in support of this word "wilfully" having been introduced,—in what way it was going to benefit the accused. I was expecting that the Honourable the Law Member might throw some light. As it is, he has not chosen to go beyond this that even his Honourable friend, Mr. S. C. Mitra, thinks that the introduction of the word "wilfully" is an improvement. He has taken for his support the opinion of another Honourable friend. But, so far as his original view as to how far that is *per se* an improvement is concerned, he has failed to enlighten the House upon it, and I would even now ask him through you, Sir, if he will even now at this late stage oblige this part of the House by telling us in what way and to what extent an accused person stands to gain anything by the introduction of the word "wilfully" which did not exist in the original draft. What I would ask him is, what would the prosecution be required to prove now, in addition to what they were required to do when this word did not exist before? That is all.

The Honourable Mr. H. G. Haig: Sir, I have only a few words to say. The amendment is, as I understand it, confined to two points. It proposes, in the first place, to substitute for the word "dissuade" the word "deter". As regards that, it is, in the main, a drafting amendment. I have not understood in what way the word "dissuade" is unsuitable for the purpose that we have in mind, and I have not been able to understand in what way "deter" is regarded as something preferable. It is true that my Honourable friend, Mr. Mitra, if I understood him aright, suggested that it is a wider word and that we should be able by the use of the word "deter" even to secure convictions otherwise not possible. But, Sir, we are perfectly satisfied with the well-understood word which has been included in the Bill. On the other point regarding the word "designedly", that has been so skilfully argued by my Honourable friend, the Law Member, what we intend by this clause is to ensure that the action should be a deliberate action—"wilfully dissuade"—, but we cannot agree to have to prove that it is part of a design, or that it is carried out with a particular intention. Sir, I oppose the motion.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 2 of the Bill, for the words 'dissuades or attempts to dissuade' the words 'or designedly, deters or attempts to deter' be substituted."

The motion was negatived.

Mr. S. G. Bhat: Sir, I move:

"That in clause 2 of the Bill, for the words 'one year' the words 'three months' be substituted."

Sir, it is admitted that this is an offence of new creation. It is further admitted by the Honourable the Leader of the House himself that there will be an absolute liability and no pleading of absence of deliberate intention will in any way help the accused. It is a fact that when challenged, the Honourable the Home Member had to admit that though there were a few cases about the Army, there was not a single case as regards the other services,—for example, the Naval, Air or Police services. It was our contention from the very beginning that if there had been any real danger, then a law of this kind was not unthinkable, but when, on mere fanciful and imaginary grounds, this new offence is being created, the severity of the sentence should be the least. All our attempts to mitigate the rigour of this unreasonable law having failed, we now appeal to Government that at least the penalty might be lessened. May it not be an instrument of tyranny and torture on the poor illiterate people, and may not the unscrupulous officers in the Police and other departments take advantage of this? So, I am suggesting that at least for the sentence of one year a smaller sentence of three months might be substituted. Sir, I move.

Mr. President The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That in clause 2 of the Bill, for the words 'one year' the words 'three months' be substituted."

Sardar Sant Singh: Sir, I rise to support this amendment and my reasons for support are that the country is passing through that stage where such an enactment of a penal character will be very much resented. This House has tried its level best to understand the position of the Honourable Members who are in charge of the administration of the country and to appreciate the difficulties and try to help them as much as they can. But it seems to me that they have not been able to convince us of the necessity of this Bill. Though it has not been possible for us to throw out the Bill bodily, yet we have tried to modify it as much as we could. Sir, the atmosphere in the country is surcharged with suspicion and distrust. If the executive continues to think that they can suppress this distrust and want of confidence in the administration by severe punishments and retributive methods, surely they are not likely to succeed as such methods have never succeeded in any other country. Apart from the political situation that will be created by such punishments as are provided in this Bill, I want to make my submissions purely from the jurist's point of view in the hope that my remarks may go to convince them of the futility of repressive measures of the kind now before the House.

It is well-known that in the old days the theory was: Life for life, tooth for tooth, eye for eye, and limb for limb. This was the criterion how the punishments were meted out to the criminals, but, later on, by the spread of knowledge and enlightenment in the country and amongst the people, the punishment has more and more come to be regarded as a

preventive measure, as a reformatory measure rather than as a retributive measure. The crime has now come to be regarded as a sort of disease which should rather be cured than put down with a vindictive hand. In this particular case we find that the offence consists in only making statements which a responsible person should not have made; nothing more than that. In a moment of weakness, probably the accused has committed or, under an excitement caused by an outside person, he has been led away from the right path and has said certain things which he ought not to have said with or without intention. This is the only criminal act done by him. Now, Honourable Members on the Government Benches want to punish him for this offence with an imprisonment of one year. Probably my friends on the other side regard a year as consisting of a few days, but really it is of 365 days and, as a matter of fact to a criminal, who is in the lock-up, it is more than 365 days, though not in number but in the actual suffering that he is to undergo. Now, if a mere statement is to be visited with a maximum punishment of one year, it will be an act of the nature of vindictiveness on the part of the executive rather than to reform the criminal. In this connection, Sir, I would like to quote Sir John Salmond, the favourite author of the Honourable the Law Member. On page 128, he says:

"Kant, for example, expresses the opinion that punishment cannot rightly be inflicted for the sake of any benefit to be derived from it either by the criminal himself or by society, and that the sole and sufficient reason and justification of it lies in the fact that evil has been done by him who suffers it. Consistently with this view, he derives the measure of punishment, not from any elaborate considerations as to the amount needed for the repression of crime, but from the simple principle of the *lex talionis*: 'Thine eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot'. No such principle, indeed, is capable of literal interpretation; but subject to metaphorical and symbolical applications it is in Kant's view the guiding rule of the ideal scheme of criminal justice."

Probably this has been the guiding principle of the Honourable Member who framed and provided this penal law for this country. But what has the jurist to say about it. He goes on:

"It is scarcely needful to observe that, from the utilitarian point of view hitherto taken up by us, such a conception of retributive punishment is totally inadmissible. Punishment is in itself an evil, and can be justified only as the means of attaining a greater good. Retribution is in itself not a remedy for the mischief of the offence, but an aggravation of it."

Now, those are the observations of a jurist who wrote the book not in an atmosphere of excitement, but in a cooler atmosphere where logic and reason and not vengeance prevailed. After all, what do you want to do? You are not protecting the persons who are actually in service, but you are trying to protect persons who are yet to join the Government service and who probably may not be accepted by the authority who is responsible for their selection. If such persons are open to such persuasion in spite of the economic depression in the country and in spite of the service motive, you should not send a man to jail for one year. That is too much. Therefore, I submit that you should not make the remedy worse than the disease itself. The Government want to suppress the civil disobedience movement and, in suppressing that movement, they should not create a spirit of greater resentment in the country. Greater resentment will react and recoil upon its authors. Therefore, I submit, that before disposing of this amendment, they should remember that after all this man has done a foolish act against which you want to provide

[Sardar Sant Singh.]

yourself. In my opinion, there should be no punishment excepting a warning or something of the sort. Section 362, Criminal Procedure Code, was recently modified and greater powers were given to the Magistrates with a view to reforming the criminal rather than to inflicting a vindictive punishment upon him. Therefore, I submit, with all the earnestness at my command, that this view of the crime, as it is proposed to be done in this clause, should not be taken.

Mr. Amar Nath Dutt: Like the baby in the Pears' soap picture he will not be happy unless he has had the whole of it and the Honourable the Home Member will not be happy unless he has the whole clause as drafted by his draftsman, who, we are assured by the Honourable the Home Member, is a very clever draftsman, although I had some experience of him in another Select Committee. The Honourable the Home Member wants the whole clause as drafted. Now, the only point is with respect to the punishment that is to be inflicted on the man who offends against the clause. Unless the Honourable the Home Member wants to be vindictive, he would not like to give such a punishment to a man who advises people only not to join such dangerous services as the Military, Naval or Air services, for everybody knows these services are attended with danger. In the one case, it is the sea and, in the other case, it is the air, while, in the Military, it is hand-to-hand fighting and, in all these cases, one's life is always in danger. In the Police service, they know of no danger to the body, it is simply danger to one's soul, because when one enters the Police service, one has to sell oneself entirely and do everything at the dictates of the executive. I am told by an Honourable friend who sits by me that I am dissuading people from entering the Military, Naval and Air forces and the Police service. Fortunately I am on the floor of this House, a few paces outside of it, when the law is enacted, I would be subject to incarceration under the clause.

Now, the question is whether the punishment should be for one year or for three months. About this, I can do no better than impress upon the occupants of the Treasury Benches in the words of Cardinal Newman as to what should be our guiding principle in legislating on these matters. We must remember, and we must not forget, that it is not by laws, far less by bayonets, that nations are governed. They will enable either a man or a nation to conquer the world, but not to rule it. Only sympathy, boundless sympathy, can conquer the hearts of people. I appeal through you, Sir, to the fortunate occupants of the Treasury Benches over there, I appeal to them in the name of humanity, in the name of civilisation and, in the name of all things sacred and dear, I appeal to them to be less rigorous and less vindictive and to have more sympathy for the Indian people who feel, rightly or wrongly, that they should have freedom of expression, and if in their desire to have the administration changed, and, in their desire to have the freedom of their own country—the land of their birth—if, in that, you cannot aid them, please do not come down upon them with such barbarous punishments as one year for simply asking a man not to enter the Military, Naval, Air or Police services. I appeal to them once more, with all the emphasis at my command, to be more humane towards the Indian people and to soften the rigours of this clause by lessening the punishment. (Applause.)

***Mr. N. R. Gunjal** (Bombay Central Division: Non-Muhammedan Rural): I support the amendment moved by my friend, Mr. Mitra. I support it, because I have given notice of a similar amendment.

I am of opinion that this amendment should not be opposed even by Government. It has been sufficiently proved by now that this is a drastic measure. It seems to me that the hands and feet of Government are now paralysed, and only the brain is working. The policy for the present seems to be to draft laws to suit the idea that may happen to flash through the brain and to administer the country accordingly. But this is a wrong policy.

Hony. Captain Rao Bahadur Chaudhri Lal Chand: There seems to be some misunderstanding about the punishment part of this clause. The Honourable Member should know that the provision of one year is not compulsory. This is the maximum punishment and in most cases only three months will be given in the first instance. This may be followed by six months in the case of a second offence and one full year will be given when this offence is committed for a third time. So the fears of the Honourable Member are unfounded. If three months or six months were substituted, what punishment would you give for habitual offenders under this clause?

***Mr. N. R. Gunjal:** I have nothing to say about the support to be given to Government by the Nominated Official Members. But I would urge upon the Nominated non-Official Members not to give their support lest they should rue the day,—which is not unlikely,—when some of their near relations may fall victims to this clause. Government will then have no consideration for the support now given by them.

The Honourable Mr. H. G. Haig: Sir, the Honourable Members who have spoken appear to be labouring under some misunderstanding. They suggest that we want to punish everybody who is convicted of an offence under this clause with one year's imprisonment. They do not seem to have taken into account the fact that the term of imprisonment which is put down in this clause is the maximum term and will not apply to the cases for which they have invited the sympathy of this House, a foolish and thoughtless word, a young boy who speaks without thinking, people who are in fact covered by Exception 2 to this clause who are dissuading persons from entering these dangerous services, so that they may escape the dangers that otherwise would beset them. I submit, Sir, that a maximum sentence of one year for an offence which may be a very serious offence is in no way excessive, and there can be no reasonable accusation against Government of being vindictive. In the case of a regular Congress agent engaged on a regular campaign of dissuading persons from joining the Military forces of His Majesty, a sentence of one year would not be, in my judgment, at all excessive. I must, therefore, oppose the amendment.

Mr. President: (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 2 of the Bill, for the words 'one year' the words 'three months' be substituted."

The motion was negatived.

*The Honourable Member spoke in the vernacular.

Mr. B. V. Jadhav: Sir, I move:

"That in clause 2 of the Bill, for the words 'one year' the words 'six months' be substituted."

I need not make a long speech as all the arguments, that were placed by this side of the House for the amendment which has just been negatived, stand good in the case of this amendment also. It has one advantage that it is more moderate and I think Government will show their sympathy to this side of the House by accepting it.

Sardar Sant Singh: Sir, having failed in carrying the last amendment, I support this amendment. The Honourable the Home Member, in his reply to the reasons advanced by me, said that I was labouring under some misapprehension and did not realise that the sentence proposed in the clause was the maximum. I may assure him that I did realise that, and with a full responsibility I criticised the provision as brutal, vindictive and retributive and not reformatory or preventive. My friend has entirely forgotten that in the earlier course of this debate it was brought out by the Honourable the Law Member that he wanted this clause to create an absolute offence and no other, and in calling it an absolute offence he was careful to say that they wanted to punish a man without making any inquiry whether there was any conspiracy or a plan existing behind the person who dissuaded or attempted to dissuade any person from entering the public services mentioned therein. If the executive do not want to punish a man as part or member of a conspiracy, but they want to punish him as an individual without trying to establish his connection with any conspiracy or unlawful assembly, then my submission is that the maximum sentence provided for this offence is really a punishment which should not have been provided in this clause.

Government are perhaps interested in forgetting that the punishment is a double-edged weapon. It brutalises him who suffers imprisonment and brutalises him who gives that punishment. The tendency of the administration is to brutalise it. We want to check that tendency; we want to persuade Government, as much as we possibly can, that they should not encourage that brutalising process in the administration. They should listen to reason and to the prevailing atmosphere in the country. After all you have not been able to establish confidence among the people; you may be regarding yourself as doing justice to the people, but it is not the doing of justice that really matters. It is the confidence that you create that justice has been done to them, that matters a great deal. You should not consider that if on the Congress platform a speaker gets up and says that no person should enter the public services he should be punished for one year as he has committed a great offence. Of course it will be an offence, but do you think the public mind will regard it as an offence? The public will feel that no offence has been committed and you cannot have that confidence which the subject should give to the administrator. If you really want to introduce democratic institutions in the country and if you really want, as was said in several speeches on this Bill, to protect the future democracy which is to be established in India, that democracy will depend on the vote of the people and the confidence of the people in the administration. How is that confidence to be established? Surely not by providing brutal punishments for offences which are being newly created and which are not to be found in the penal Statutes of any civilised nation. Therefore, I say that it is not a maximum

punishment which is being provided; as a matter of fact, we find from reports in the press that maximum punishments are awarded by Magistrates in all political cases. We want to provide against it. Therefore, I will still say that this amendment at least should be accepted. These are offences which should not be visited by more than a warning from the Magistrates, not to speak of sending people to prison and associate with people who have committed foul offences. Therefore, I will support this amendment.

Mr. S. O. Mitra: Sir, while moving the earlier amendment about the period of imprisonment, I was fondly hoping that even if my amendment was not acceptable, it might be that this amendment of Mr. Jadhav might be acceptable to the Government. We should not forget in this connection the prison life that is ordained here for all persons. The question about classification was long discussed in this House: and Government said that they would not take into account the motive for the crime; but in the matter of jail classification, they would look to the standard of life to which the particular prisoner was accustomed. It is the experience of all the Members of this House that political prisoners are, as a rule, classed as C class prisoners and they are put in the same jail wards along with hardened criminals; and, as my friend, Sardar Sant Singh, said, jail life itself will make them even worse. It was with that intention that we appealed to Government that for this technical offence, which is a new one, created for the first time, Government should have some consideration; but if they are determined to have their pound of flesh, let them have it; we know we are not strong in votes; yet I think there is still time for Government to come forward and say that they accept such a very humble amendment.

The Honourable Mr. H. G. Haig: Sir, we have heard a denunciation of the accepted theory of punishment. I understand that my Honourable friend, Sardar Sant Singh, considers that all imprisonment brutalises and my Honourable friend, Mr. Mitra, appeals to us not to send people to prison, because of the conditions which are experienced in jail. That argument can be carried a long way. I do not know whether Sardar Sant Singh objects to the whole of our criminal system and would like to abolish altogether our penal laws and our jails. But if not, I think much of his argument is beside the point. The offence for which it is proposed to enact this punishment is not, as Mr. Mitra would suggest, a technical offence. It is a serious offence and I submit that the maximum punishment of one year's imprisonment is in no way excessive. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 2 of the Bill, for the words 'one year' the words 'six months' be substituted."

The motion was negatived.

Mr. S. O. Mitra: Sir, I move:

"That in clause 2 of the Bill, after the words 'or with fine' the words 'not exceeding two hundred rupees' be inserted."

It has been said that there is a maximum sentence as regards imprisonment. What are the grounds for the Government here not fixing a maximum for the fine? I think Government will explain it. It is not a rare

[Mr. S. C. Mitra.]

occasion that, during these days of political crimes, there are vindictive sentences. We have heard of fines of Rs. 20,000 inflicted on people who are known both to the Government and to the people that there was nothing sordid in the motive of their crime. It may be that under the present law patriotism may be punishable; it may be that the encouragement of indigenous industries by persuading people may be punishable, but there should be some limit to those fines. If there is no limit, there are officers of Government who will think that a very large sum in these days of financial stringency will help the treasury, and apart from any consideration of the crime they may be disposed to impose very heavy fines. If there was any necessity for the sentence to be fixed and not left to individual discretion of the Judges, I think, Government will give good reasons why they have put no limit to the amount of fine. I move that a reasonable sum like two hundred rupees for a newly created offence may be considered by Government as acceptable. I move. *

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That in clause 2 of the Bill, after the words 'or with fine' the words 'not exceeding two hundred rupees' be inserted."

Mr. Lalchand Navarai: Sir, the offence is sought to be punished with imprisonment which may extend to one year or with fine or with both. When the offence is punishable with fine and tried by a first class Magistrate, he can fine up to the extent of one thousand rupees. I submit that we do understand on this side of the House that it is not always that the maximum punishment is inflicted by the Magistrates; but we know that under the Ordinances extreme punishment has been awarded. Therefore it is that we put these amendments in order to restrict the hands of the Magistrates who try these cases to inflict reasonable punishment. I submit, for a first offence of this nature in which no intention has to be proved and the burden of proof has been cast upon the accused to show *bona fides*, to punish him with one year's imprisonment and a fine up to one thousand rupees is inhuman and cruel. I would, therefore, submit that this amendment asking the limit to be put at two hundred rupees is a reasonable amendment and I support it.

Mr. S. G. Jog: Sir, I am surprised to find that the Government are at times consistent and at times inconsistent. If we go through the other provisions of this Bill, we find that in some places the amount of the fine has been fixed. I will draw attention to clause 4—boycott of public servants—I do not want to discuss the other provisions of the clause and I will limit my observations to the provision as regards punishment: it is said there "imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees". There is another clause also—clause 7—the long discussed molestation clause where also it is said "imprisonment which may extend to six months or with fine which may extend to five hundred rupees". There are also other provisions where fine has been fixed. The Government should now be aware that there is a sort of diffidence on this side of the House as to giving power to Magistrates—whether some fetters should not be put on their discretion—and since the Government have made provisions in

other clauses limiting the amount of fine, I should see no reason why such a salutary provision should not be made in this. The Magistrates, as we all know, are at times vindictive in these days, and they inflict the highest amount of fine on the accused, and it is only right, as has been suggested by previous speakers, that there should be imposed a restriction as to the amount of the fine to be imposed. I do not wish to subscribe to the idea that in these days of financial stringency they want to fill the coffers of the Government by money realised from these heavy fines—I do not want to charge the Government with that motive at all. But we have to depend upon the local Magistrates, and these local Magistrates are of different views and different temperaments who always do not take, when deciding cases, just views, and, therefore, it is very necessary that some restriction should be placed on the amount of the fine to be imposed, and the suggestion, that Rs. 200 as fine would be sufficient, ought to be accepted by the Government. It is a very reasonable suggestion and it should be accepted. Sir, I support this amendment.

Mr. Amar Nath Dutt: Sir, we were assured by the Honourable the Home Member that it is not necessary that the maximum punishment should always be inflicted upon a transgressor of this clause. He has said that the maximum punishment is only provided for those whose offence is in an aggravated form, but here there is something which ought not to escape his notice. I invite the attention of the Honourable the Home Member to the words "or with fine", and this is one of the hardest punishments that can be inflicted upon a transgressor. Honourable Members will find that later on there are provisions in this Bill in which the sins of the son will be visited on the father, and so I think it is very unwise to vest the executive with such unlimited powers who, in their desire to get a lift in service or a title or some other advantage for their sons or relations, are always over-zealous, will inflict the highest punishment and realise the maximum amount that can be realised not only from the transgressor but also from his father. A man may be worth, say, two lakhs of rupees, and there is nothing in the clause to prevent inflicting a fine of one lakh or even more and realise it from his father. (*An Honourable Member:* "Beware.") Honourable Members who are fathers of sons may themselves, even staunch loyalists under the protecting wings of the officials with expectations of titles and honours, they also must not forget the fact that we have found sons of Government servants joining the revolutionary movements and transgressing the law. They should also beware, whether they are Nominated or elected Members, it does not make any difference at all, there is no distinction between my son and the son of my friend over there, Rai Bahadur Satya Charan Mukherjee; and it is not our sons who will have to pay these heavy fines, but it is my friend over there who will have to pay the same. I may mention here, Sir, that in these terrorist crimes sons of Deputy Magistrates, Rai Bahadurs, Police Officers and others have been found to be implicated like sons of others. Nay, it is the sons of those fathers who are ultra loyal who are going astray more than our sons. Therefore, Sir, I think it is up to every Member of this House, be he a Government servant or a Nominated Member or an elected Member, that he should see that this amount of fine is restricted. At the same time, I appeal to that sweet reasonableness of the Honourable Member to see that this unlimited liability to fine should not have a place in the Bill and that some restriction is placed on the powers of the arbitrary executive.

Mr. D. K. Lahiri Chaudhury (Bengal: Landholders): Sir, I rise to support the amendment which has been moved by my friend, Mr. S. C. Mitra. When we are faced with such a drastic measure like this, I think it is only right and just that some relief should be given to those people who will come under the purview of this clause. In this connection I may draw the attention of the House,—and I hope I shall not be called irrelevant on this point,—that the Bombay Government recently in trying to suppress the *Free Press* took a very serious attitude by ordering a sum of Rs. 20,000 to be forfeited which was deposited with Government as security. This is a *prima facie* case in which it is clear that the Magistrate has abused his power in awarding the most vindictive and maximum punishment. Therefore, Sir, unless we put a limit to the amount of fine to be imposed under this clause, I do not know how far the amount of fine can go—it may go up to Rs. 20,000, Rs. 30,000, Rs. 50,000 or even one lakh, and it will be left entirely to the sweet will and pleasure of the executive on whom few Members on this side of the House have any faith, because of the simple reason that the executive is irresponsible. Therefore, every Member on this side of the House, who has a little conscience, who has a little judgment of his own, who has a little power of conviction, will admit that clause 2 should be drafted in such a way as to limit the amount of fine. The amendment suggested by the Honourable the Mover is perfectly reasonable, very proper and cogent, and I hope that at least on this particular issue the Treasury Benches, though doubtless they are in a majority, will see eye to eye with us and accept the amendment. At least from a purely humanitarian point of view, I think they should accept this amendment. With these words, I strongly support the amendment.

The Honourable Mr. H. G. Haig: Sir, the objection that has been taken is that the clause imposes no limit to the fine, and one might have expected, listening to Honourable Members, that we were introducing some new and unheard of principle into the Criminal Law. But, as Honourable Members opposite are well aware, it is an extremely common feature in the Indian Penal Code that the amount of fine is not defined. Let me take, for instance, an offence like theft, which may be an exceedingly petty matter. It is punishable with fine without any limit. But the Penal Code does lay down one provision with regard to fines, and it is important to bear that in mind,—where no sum is expressed to which a fine may extend, the amount of fine is unlimited but shall not be excessive. And, in that connection, I would ask Honourable Members to remember that there will be in all these cases an appeal. If we are to suppose that the Magistrate takes an unreasonable view and imposes an excessive fine, there is always an appeal, and we can be perfectly sure that in the end the fine will not be excessive. There is another safeguard which has perhaps escaped the notice of Honourable Members. There were suggestions that fines to the extent of Rs. 20,000, Rs. 50,000 and even one lakh might be imposed. But these cases will be tried by Magistrates, and, as the House is aware, the maximum fine that can be imposed by a First Class Magistrate is Rs. 1,000.

Mr. Amar Nath Dutt: By tacking another section with the complaint you can take it up to the Sessions Court.

The Honourable Mr. H. G. Haig: I do not think it is likely, in order to get a conviction in a case in which the maximum imprisonment is one year—that we are likely to go to the Sessions Court

Mr. Amar Nath Dutt: You may tack another section to it and send it to the Sessions Court.

The Honourable Mr. H. G. Haig: The other alarming picture that has been presented to us is that Honourable Members' children will run out and commit these offences and then they will be liable to a fine of Rs. 50,000.

Mr. D. K. Lahiri Chaudhury: Who knows? Your son can also come into this fold.

The Honourable Mr. H. G. Haig: I would suggest that this is not the kind of offence that children under the age of 16 are in the habit of committing, and I think even if Honourable Members have very little control over their children they need not be apprehensive that in this respect their children will get them into trouble. Sir, I oppose the amendment.

Mr. President: The question which I have now to put is:

“That in clause 2 of the Bill, after the words ‘or with fine’ the words ‘not exceeding two hundred rupees’ be inserted.”

The motion was negatived.

Mr. N. R. Gunjal: Sir, I move:*

“That in clause 2 of the Bill, after the words ‘or with fine’ the words ‘not exceeding one hundred rupees’ be inserted.”

Mr. S. C. Mitra: On a point of order, Sir. When the motion for a two hundred rupees fine has been defeated, will it be in order to move for this fine of one hundred rupees?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair does not see any objection. The House may consider two hundred rupees as too heavy a fine and may agree to limit it to one hundred rupees.

The Honourable Mr. H. G. Haig: I do not think it is necessary to repeat the arguments that I have just stated before the House with regard to the previous amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question that I have now to put is:

“That in clause 2 of the Bill, after the words ‘or with fine’ the words ‘not exceeding one hundred rupees’ be inserted.”

The motion was negatived.

*The Honourable Member moved the Amendment in the vernacular.

Mr. Lalchand Narain: Sir, I move:

"That to clause 2 of the Bill, the following Proviso be added:

'Provided that no Court shall take cognisance of an offence punishable under this section unless upon complaint made by order or under authority from the Local Government or some officer empowered by the Government in this behalf.'

Now, we are passing to a different kind of amendment. I do not think this amendment will come in the way of the Honourable the Law Member or create the same difficulty which he was apprehensive of. In other words, I submit that this amendment does not interfere with the clause being kept as one involving absolute responsibility. The category of absolute responsibility will remain as it is. It also does not interfere with or minimise or change the burden of proof. The burden of proof will lie as the clause stands upon the accused to show his *bond fides*. How far that is correct I am not going to say anything further about it. The amendment which I am at present putting forward is only a safeguard, and if it is not accepted, the Government would be open to the reproach of being vindictive. It is the only safeguard against the reckless and unscrupulous ways of the police of which we hear so much. What I want by this amendment is that a blank cheque should not be given to the police to prosecute any man they liked. This amendment aims at having some consideration given to the person who is being prosecuted under this clause. The Local Government under this amendment will have to consider and find out whether the man concerned is really *prima facie* guilty of an offence under this clause. Therefore, it will not only afford a safeguard to the man to be prosecuted, but it will create confidence amongst the people that such cases were considered before the launching of the prosecutions by higher authorities. This very proviso has been added to some of the other clauses, and I do not know why it has not been joined to this clause. In clause 4, which deals with the prevention of boycott of public servants there is a proviso in exactly the same words as the amendment which I am proposing. Just now the Honourable the Home Member said in connection with the question of punishment that this was a serious offence. May I ask if this offence is not more serious or graver offence than the boycott of public servants. Therefore, there should be more precaution taken before a prosecution is launched under this section. If the Government want to prove that they are not proceeding with this Bill in a ruthless manner, but they are ready and willing to give full consideration to the peoples' point of view, then, I submit, that this is a necessary safeguard which should not be refused. The point has now been made so clear. Further more, this clause provides a punishment of one year's imprisonment, whereas clause 4 provides a punishment of only three months' imprisonment and yet there is a similar proviso attached to clause 4, but not added to clause 2. I think the Government will be simply stultifying themselves if this amendment is not accepted.

Sardar Sant Singh So far as the substantive law is concerned, the Government had succeeded in taking its pound of flesh. Not a single amendment has been accepted. If the need for such legislation is very acute, let it be. Now comes the adjective law to be modified. My friend's amendment aims at modifying the procedure in order to meet a contingency that may arise. The Government have been always reminding this side of the House that they should face the realities. It is my turn to remind them that they should face the realities now. They should give up the police mentality and take up a judicial mentality.

(An Honourable Member: "Why not both.") A friend of mine asks, why not both mentalities. The police men's mentality is visible in the whole frame of this Bill. My friend today is supporting this measure. Tomorrow he may find himself in a position to curse himself why he ever supported this measure. This unhappy police mentality is found all over this unfortunate country, but the judicial mentality is lacking. I would appeal to my Honourable friend, the Law Member, who is slowly but surely giving away the power from his hands to his neighbour, the Home Member. In all countries, the rule of law takes the place of the rule of the executive. Here the rule of the executive is taking the place of the rule of law. Before a man is charged with the extraordinary offence created here for the first time, he should beware of the dangers that lie in his path. He should be careful to see that no action is taken which is not warranted by the facts of a particular case. When we complain of the highhandedness of the police, at once comes the reply from the other side that the police are doing their duty in a very upright and public spirited manner. We have no quarrel with that at this stage. What we quarrel about is about placing too much power in the hands of the police. They may consist of angels, but the public have no confidence in them. The public may be wrong, but the impression is there and you cannot deny the existence of that impression. It is the duty of the Legislature to remove that impression if it is a mistaken impression. You are making this offence cognisable under clause 9 of the Bill and giving power to the police to take up the investigation and send up a man for trial. Many of my friends can state from their own personal experience that such cases are taken cognisance of on the shadiest of grounds and the silliest of pretences. Once you give power to the police, the police will not take long in making use of it. There must be some controlling authority and we want if such an act is condemned it should be examined first by the highest authority in the land, that is the Local Government and, if not the Local Government, then some responsible officer empowered by the Local Government to examine this question before the prosecution is launched. The amendment is a very important one. It involves a question of principle and I will submit, with all the emphasis at my command, that the executive should take note of it. They are out to suppress the civil disobedience movement and they should not inflame the public mind unnecessarily. This safeguard should not be lightly disposed of without examining its merits. Sir, I support the amendment.

Hony. Captain Rao Bahadur Chaudhri Lal Chand: The Government's position is not enviable. In the Bill, as was introduced by the Honourable Mr. Haig, all these offences were triable by "any Magistrate" and in that case most of these offences would have gone to third class Magistrates. The fine would not have exceeded Rs. 50. But pressure seems to have been brought upon Government and these offences are now triable by First Class Magistrates only. That is why the previous amendment came in.

Government have agreed to add a similar Explanation to clause 4. Honourable Members will remember that when the first motion on this Bill; that "it should be circulated for public opinion" was being discussed, Mr. Puri, an eminent criminal lawyer, in the course of his speech while criticising the said Explanation remarked that, the safeguard was no safeguard at all. He criticised this very severely and said that the Local Government's sanction would depend on what the District Magistrate wrote and the District Magistrate will write what the sub-inspector will

[Hony. Capt. Rao Bahadur Chaudhri Lal Chand.]

suggest, and so forth. The Court Inspector will produce the Government certificate and, having seen that certificate, the trying Magistrate will only give the accused the maximum punishment. Instead of being a safeguard, this was characterised as a handicap for the accused by the Honourable Mr. Puri. Now another eminent lawyer, Mr. Lalchand Navalrai, says.....

Mr. Lalchand Navalrai: Let us make the best of even a bad bargain.

Hony. Captain Rao Bahadur Chaudhri Lal Chand: He now says this is a safeguard and should be added to clause 2 also. Now this reminds me of a very pertinent remark made by the Honourable Mr. Haig in his speech at Simla in which he said that when the Opposition speaks through many mouths, they sometimes contradict each other. The Honourable Mr. Haig can only give one reply. He will say "I cannot please them and so let things remain as they are."

Now, as regards this amendment, I have only to submit that speedy action is the very essence of all these clauses. If you make it dilatory, and justice is delayed, then, of course, the effect will go. If you add this Explanation, it would mean that the cases would come up before the Courts several months after the commission of the offences. That is not desirable in ordinary cases. These are only simple cases triable by Magistrates of the third class, with only two witnesses, and, for all such cases, to go up to the Local Government would be very irksome and inconvenient and expensive. Sir, I, therefore, oppose this amendment.

Mr. S. C. Mitra: Sir, I support the amendment of my friend, Mr. Lalchand Navalrai. I find that in the Bill itself there is a provision that clauses 4 and 7 shall only come into force if there be a notification in the local official Gazette so that the Provinces that do not suffer from this kind of disorder may be exempted from the operation of this Bill. I do not know why this particular clause has also not been incorporated in sub-clause (3) of clause 1, since it has been admitted by the Honourable the Home Member that at present there are very few cases of the kind. The only thing he could say about it was that he had some reports from the military authorities. But we, in Bengal, have no soldiers, no Army and no recruitment.

The Honourable Mr. H. G. Haig: On a point of order, Sir. Is the Honourable Member speaking to this amendment or to another which is coming on later?

Mr. S. C. Mitra: Anybody who has sense will understand how I am developing my point. (Laughter.) Sir, Bengal should not be affected, because if I have heard the Honourable the Home Member aright, he could only cite instances not from any Naval, Air or Police services, but from some Military authorities. What I was pressing for consideration is, that Provinces like Bengal, which are not concerned with the Army, due to a fine sense of justice of the benign Government, should not labour under the same difficulties. I pressed that this clause should come under one of those cases included in sub-clause (3), but the least that I can expect now—if the Government have not the sense to relieve other Provinces where these cases are very infrequent, and it is only a figment of the imagination of the Honourable the Home Member that he must provide for all sorts

of likely and unlikely eventualities—the least thing that can be done is this, as my Honourable friend, Mr. Lalchand Navalrai, has said that there is apprehension in the public mind that any ukase coming from the Local Government for starting cases might prejudice the issue before the Magistrate. That is quite correct. There is some misapprehension, but as we have pressed the point repeatedly, if that has failed to arouse the attention of the Honourable the Home Member, well, I think, this side of the House is not to blame. Though challenged, the Honourable the Home Member could not cite cases, occurring even before the promulgation of this Ordinance or during the subsequent period, of offences against which provisions are sought to be incorporated in this clause. Then, why should not steps be taken and provisions be made so that people may not be unnecessarily harassed? Our contention all along was that it would mean an instrument of tyranny in the hands of the lower police officials and others. Let us provide, I say, against any chance of misapplication and abuse of these clauses. My friend, Mr. Lalchand Navalrai, suggested that the Government, by the strength of their votes in the House, carry everything, but why should there be any hesitation, when they have really got everything that they wanted, in providing that insignificant or unnecessary or petty cases may not be started? Sir, I support my friend, Mr. Lalchand Navalrai's amendment

Mr. Amar Nath Dutt: Sir, I am doubtful about the efficacy of the provision; and, in fairness to the Honourable Members of the Treasury Benches, I must say that I have not been able to make up my mind in spite of the reasons adduced by my Honourable friend, Captain Lal Chand. Sir, we know how these sanctions are obtained, and these things, as my Honourable friend over there remarked, start generally with a report coming up from the chowkidar to the sub-inspector, then from the latter to the Deputy Superintendent or Deputy Magistrate and then from him to the Magistrate and then from the Magistrate to the Commissioner of the Division and then to the Secretary of the Local Government. There is another danger. Whenever a sanction comes from the Local Government, then, for a Magistrate not to convict will be a very difficult matter.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muham-madan): Why?

Mr. Amar Nath Dutt: My friend, Mr. Gaya Prasad Singh, wants to know, why? He need only go back to the days when he was a Magistrate, because, considering the material of which the subordinate magistracy or police in this country is composed in the provinces, I think I would rather agree with my Honourable friend over there, with that Lalchand (Captain Chaudhri Lal Chand) than with our own Lalchand, and I am doubtful about the efficacy of this proviso. I am, therefore, unable to support my friend, Mr. Lalchand Navalrai's amendment.

Mr. Gaya Prasad Singh: Sir, although I support my friend in his main contention relating to the amendment, I want to dissociate myself from the observations that he made with regard to the Magistracy, to which I also had the honour to belong at one time. Sir, it is not the material that is at fault as alleged by the previous speaker, these public servants are our own countrymen, but the system under which they have to work.

[Mr. Gaya Prasad Singh.]

The combination of executive and judicial functions tends to the lowering down of the morale of the officers concerned; and, in the circumstances, they are more objects of our sympathy than of anything else. My Honourable friend's observations were sweeping. Our Magistrates may be bad, good or indifferent, but that does not mean that the entire body should be tarred with the same brush. (Hear, hear.)

The Honourable Mr. H. G. Haig: Sir, I am glad to have heard from my Honourable friend, Mr. Gaya Prasad Singh, a well-deserved tribute to the service to which he himself once belonged. In a somewhat fervent speech to which we listened from Sardar Sant Singh it seemed to be assumed that the procedure proposed in this amendment was something normal and that consequently if it were not provided we were doing something fresh which will be irritating to the country. But, Sir, my first point is that this is a very unusual procedure; it is a cumbrous procedure; and it is obviously not a procedure that should be adopted except for very definite reasons. Now, those reasons, as I conceive them, would be that there is some serious danger that cases would be instituted improperly. Now, I have looked through some of the examples that I have of actual cases that have occurred and it appears to me that those cases, so far as facts are concerned, are, as a rule, perfectly simple. That has nothing to do with the gravity of the offence. The circumstances of the case are usually simple. A Congress agent interfered with recruiting in a particular district with the result that six recruits withdrew after actually joining the recruiting party: recruits and the members of a recruiting party were spoken to by certain men who tried to put them off enlistment: a certain individual lectured a party of recruits and succeeded in making one desert. Those are the kind of cases that have been happening. Now, Sir, I submit that in cases of this kind there is no necessity to go through this elaborate procedure of obtaining the previous authority of the Local Government or some other authority before the commencement of the case. Another point which is of great importance was made by my Honourable friend, Captain Lal Chand, and that is that in cases of this kind it is most desirable that action should be taken promptly, and the procedure proposed will simply involve a delay which the facts of the case do not in any way justify.

Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question I have now to put is:

“That to clause 2 of the Bill, the following proviso be added:

‘Provided that no Court shall take cognisance of an offence punishable under this section unless upon complaint made by order or under authority from the Local Government or some officer empowered by the Government in this behalf.’”

The motion was negatived.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

“That clause 2 stand part of the Bill.”

The Assembly divided :

AYES—53.

Abdul Hye, Khan Bahadur Abul
Hasnat Muhammad.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab.
Allah Baksh Khan Tiwana, Khan
Bahadur Malik.
Amir Hussain, Khan Bahadur
Saiyid.
Anklessaria, Mr. N. N.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Bower, Mr. E. H. M.
Dalal, Dr. R. D.
DeSouza, Dr. F. X.
Dudhoria, Mr. Nabakumar Sing.
Dunn, Mr. C. W.
Dutt, Mr. G. S.
Fox, Mr. H. B.
Graham, Sir Lancelot.
Greenfield, Mr. H. C.
Gwynne, Mr. C. H.
Haig, The Honourable Mr. H. G.
Hezlett, Mr. J.
Hossack, Mr. W. B.
Hudson, Sir Leslie.
Ishwarsinghi, Nawab Naharsingji.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur
Sardar.
Lal Chand, Hony. Captain Rao
Bahadur Chaudhri.
Mackenzie, Mr. R. T. H.

Macqueen, Mr. P.
Meek, Dr. D. B.
Metcalf, Mr. H. A. F.
Mitter, The Honourable Sir
Brojendra.
Moore, Mr. Arthur.
Morgan, Mr. G.
Mukherjee, Rai Bahadur S. C.
Naydu, Rao Bahadur B. V. Sri Hari
Rao.
Noyce, The Honourable Sir Frank.
Parsons, Sir Alan.
Rafiuddin Ahmad, Khan Bahadur
Maulvi.
Rajah, Rao Bahadur M. C.
Rajan Bakhsh Shah, Khan Bahadur
Makhdum Syed.
Rau, Mr. P. R.
Ryan, Mr. T.
Sarma, Mr. R. S.
Schuster, The Honourable Sir George.
Sher Muhammad Khan Gakhar,
Captain.
Singh, Mr. Pradyumna Prashad.
Smith, Mr. R.
Sorley, Mr. H. T.
Suhrawardy, Sir Abdulla-al-Mámün.
Tottenham, Mr. G. R. F.
Yakub, Sir Muhammad.
Yamin Khan, Mr. Muhammad.
Zulfiqar Ali Khan, Sir.

NOES—20.

Abdul Matin Chaudhury, Mr.
Abdur Rahim, Sir.
Dutt, Mr. Amar Nath.
Gunjal, Mr. N. R.
Jadhav, Mr. B. V.
Jha, Pandit Ram Krishna.
Jog, Mr. S. G.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.
Misra, Mr. B. N.
Mittra, Mr. S. C.

Murtuza Saheb Bahadur, Maulvi
Sayyid.
Pandian, Mr. B. Rajaram.
Phookun, Mr. T. R.
Sant Singh, Sardar.
Sen, Mr. S. C.
Sen, Pandit Satyendra Nath.
Singh, Mr. Gaya Prasad.
Sitaramaraju, Mr. B.
Uppi Saheb Bahadur, Mr.

The motion was adopted.

Clause 2 was added to the Bill.

The Assembly then adjourned till Eleven of the Clock on Wednesday,
the 23rd November, 1932.