

20th September 1939

THE

LEGISLATIVE ASSEMBLY DEBATES

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(30th August to 22nd September, 1939)

TENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1939



NEW DELHI
GOVERNMENT OF INDIA PRESS
1940.

Legislative Assembly.

President:

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I.

Deputy President:

MR. AKHIL CHANDRA DATTA, M.L.A.

Panel of Chairmen:

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MR. M. S. ANEY, M.L.A.

SIR COWASJI JEhangIR, BART., K.C.I.E., O.B.E., M.L.A.

MR. A. AIKMAN, C.I.E., M.L.A.

Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistants of the Secretary:

MR. M. N. KAUL, BAR.-AT-LAW.

KHAN SAHIB S. G. HASNAIN.

Marshal:

CAPTAIN HAJI SARDAR NUB AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions:

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

MR. A. AIKMAN, C.I.E., M.L.A.

SYED GHULAM BEIK NAIRANG, M.L.A.

MR. N. M. JOSHI, M.L.A.

RAJA SIR VASUDEVA RAJAH, C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 20th September, 1939.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

PROVISION OF WATER AND DRAINAGE SYSTEM IN KAROL BAGH, DELHI.

†250. *Bhai Parma Nand : Will the Secretary for Education, Health and Lands please state :

- (a) whether Government are aware of the fact that so far the Karol Bagh area is concerned, the Delhi Improvement Trust is sanctioning only the plans of those houses which provide flush latrines, etc. ;
- (b) whether it is a fact that many houses have already been completed and others are under construction ;
- (c) whether it is a fact that without the provision of water and proper drainage it is not possible to use the flush latrines so provided in the houses ;
- (d) what steps the Delhi Improvement Trust have taken or propose to take for having the water and drainage system laid in the lanes and streets of Karol Bagh where new houses have either been built or are under construction before resorting to sanctioning only such plans for houses which contain flush latrines ;
- (e) whether it is a fact that on account of the delay in the supply of water in the old and newly constructed houses, the people are greatly inconvenienced ;
- (f) how many new connections for the supply of water have been sanctioned for the Karol Bagh area by the Delhi Municipal Committee since 1st January, 1939, and how many of them are still awaiting the opening of water connections, and why ; and
- (g) whether Government propose to have the matters expedited so that people may not suffer from any delay in the Delhi Municipal Office or the Improvement Trust ; if not, what are the circumstances which prevent Government from

†Answer to this question laid on the table, the questioner being absent.

taking the action suggested and when it is likely that water connections in all the houses will be opened and when the drainage system will be in working order ?

Mr. G. S. Bozman : (a) Yes, except in the areas intended for poor class people where public water-borne latrines are provided at the expense of the Trust.

(b) and (c). Yes.

(d) Water sub-mains and branch sewers have been laid throughout the Karol Bagh area.

(e) Not that Government are aware.

(f) The figures asked for are not readily available.

(g) The water supply and drainage systems are in working order and connections can be given as and when people apply for them.

ALLEGATIONS AGAINST THE STAFF EMPLOYED AT BHOLI BHATYARI TANK NEAR KAROL BAGH, DELHI.

†251. ***Bhai Parma Nand :** Will the Honourable Member for Labour please state :

- (a) whether Government are aware that a large number of residents of New Delhi, Paharganj and Karol Bagh go out for walk every morning and evening on the ridge between New Delhi and Karol Bagh where there is an open unfiltered water tank near Karol Bagh known as " Bholi Bhatyari tank " ;
- (b) whether it is a fact that whenever any person happens to touch the water of the tank, to wash his hands in it or to peep over it, he is shouted at by the menials employed at the tank in the most insulting language and on protest, he is escorted to the out-houses at the tank and is given a severe beating there and at the same time the telephone on the spot is used for giving a message to the police in their self-defence ;
- (c) whether it is a fact that a large number of cases of assault and rioting have occurred on this tank and in several cases, besides insulting and beating, small sums of money have been extorted from people on pain of handing them over to the police ;
- (d) whether it is a fact that in some cases obstruction to the pedestrians from using the public road by the side of the tank has been caused by some members of the menial staff only recently ;
- (e) whether it is a fact that the above-mentioned staff in some cases commit cognisable offence and a large number of respectable persons have often witnessed such criminal actions on the part of this staff ;

†Answer to this question laid on the table, the questioner being absent.

- (f) whether it is a fact that while assaulting persons the menial staff shout that they have instructions from their *Sahab* to beat anyone, and also to inform the police in case anyone touches water or comes to the tank, and in spite of the fact that complaints have come to the notice of the departmental officers both verbally and in writing no notice has ever been taken ; and
- (g) whether Government are prepared to state what action Government propose to take against the officer and his head clerk who are responsible ; if not, why not ?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar :

(a) I am prepared to take it from the Honourable Member that the road near the Bholi Bhatyari reservoir is a place of resort. The reservoir is not, however, open to the road ; it is in a fenced enclosure.

(b) As already explained the reservoir is in a fenced enclosure. It is not a public place ; the water is not potable ; and the reservoir is not safe for swimmers. The watchman has orders to keep the public out.

(c) Government are not aware of any such incidents.

(d) and (e). No.

(f) No. There is no basis for these allegations.

(g) Does not arise.

CONTROL OF PRICES.

252. *Mr. H. M. Abdullah : Will the Honourable the Commerce Member please state :

- (a) whether the Government of India issued a *communiqué* warning dealers against speculation in commodities when they were contemplating bringing into force machinery to restrict profiteering ;
- (b) whether it has come to the notice of the Government of India that prices of staple commodities have risen between thirty to fifty per cent. during the last few days particularly in Lahore ; and
- (c) if so, whether Government propose to take immediate steps to control prices to stop the panic prevailing amongst the masses and the profiteering at present being carried on by traders ?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar :

(a) A *communiqué* was issued on the 25th August, warning dealers against speculation in necessities such as foodstuffs.

(b) Government are aware that in the beginning of this month prices of certain commodities rose in many places including Lahore.

(c) The attention of the Honourable Member is invited to the notification issued by the Department of Commerce, No. 20, dated the 8th September, 1939, published in the Gazette of India Extraordinary of the same date. Copies of the Gazette are in the Library of the Legislature.

BLASTING OF ROCKS BY GUN POWDER IN KAROL BAGH, DELHI.

†253. *Mr. Suryya Kumar Som : Will the Secretary for Education, Health and Lands please state :

- (a) whether Government are aware that quite recently (2nd August, 1939) a daughter of one Tej Khan of Naiwala (NN Block), Karol Bagh, Delhi, died in a hospital after having received fatal injuries in her head from a stone blown off as a result of the use of gun powder for blasting a hard rock under the direction of a Government contractor there ;
- (b) whether Government took any action against the contractor or his agents through whose negligence the hard rock in close proximity of the populated area was blown off and due to which the incident took place ;
- (c) whether any compensation has been paid to the girl's father ; if so, how much and by whom ;
- (d) whether Government are aware that blasting of rocks is carried out by contractors in Karol Bagh by gun powder indiscriminately and to the detriment of the life and property of the areas ;
- (e) whether any contractor or contractors were ever warned by the Central Public Works Department or the Delhi Improvement Trust for using gun powder for blasting against the terms of the contract ; if so, who were they and when each one of them was warned ;
- (f) whether it is a fact that the rates given to the contractors for the works on or near the hard rock are much higher than the ordinary one and in order to save labour, etc., they do not observe the conditions of the contract in regard to this matter ; and
- (g) whether Government are prepared to consider the desirability of stopping altogether the use of gun powder in Karol Bagh area or near about in order to save the life and property of poor people of the area ; if not, what are the reasons ?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : Information has been called for and will be supplied in due course.

INSTALLATION OF SANITARY FITTINGS, ETC., IN KAROL BAGH, DELHI.

†254. *Mr. Suryya Kumar Som : Will the Secretary for Education, Health and Lands please state :

- (a) how and when the Delhi Improvement Trust proposes to enforce the installation of sanitary fittings including flush latrines, etc., in Karol Bagh area ; and

†Answer to this question laid on the table, the questioner being absent.

- (b) whether Government are aware that all the leaseholders of the plots who are having their plans for houses passed or sanctioned now are required to have flush latrines and other sanitary fittings laid down ; if so, when it proposes to order the sanitary installation in the houses already existing in Karol Bagh area and have its sanitation improved on the lines of New Delhi ?

Mr. G. S. Bozman : With your permission, Sir, I shall answer questions Nos. 254, 255, 256 and 258 together.

I have asked for certain information and will furnish replies as soon as it is received.

INCREASE IN THE RENTS OF NAZUL LAND IN DELHI.

‡255. ***Mr. Suryya Kumar Som :** Will the Secretary for Education, Health and Lands please state :

- (a) whether the Delhi Improvement Trust has so far revised and increased the rents payable by the lessees of the Nazul land leased out by the Nazul Officer ; if so, on what lines the increase in rents has been adopted ; if not, what would be the basis of the increase in rents and whether the Delhi Improvement Trust intends to take full advantage of the provisions of the clause in the lease that the rents on revision after first 20 years could be doubled and proposes to increase it by nothing less than cent. per cent. without inspecting the economic condition of the tenants of the localities, e.g., Karol Bagh, Shidipura, etc. ; and
- (b) whether Government are prepared to consider the desirability of not only allowing a small increase in the rents but to have lower rate of the rents fixed in cases of the disposal of new plots by the Delhi Improvement Trust with a view to helping the lower and middle classes of the population ; if not, why not ?

UNSATISFACTORY SANITARY CONDITION OF NAIWALA IN KAROL BAGH, DELHI.

‡256. ***Mr. Suryya Kumar Som :** Will the Secretary for Education, Health and Lands please state :

- (a) whether Government are aware that the sanitary condition of the Naiwala, Karol Bagh, is far from satisfactory and that in spite of the fact that the Health Officer, Delhi, was many a time approached and taken round, the sweepers and others not caring for any complaint or orders continue to throw rubbish around the locality and keep it very dirty ;
- (b) whether Government are aware that carcasses of animals from the city are also brought and dumped in close proximity of the locality which worsens the conditions and makes it still more unhealthy to reside there ;

†Answer to this question laid on the table, the questioner being absent.

‡For answer to this question, see answer to question No. 254.

- (c) whether the desirability of bringing Karol Bagh area under the charge of the Health Officer, New Delhi, was ever considered ;
- (d) whether Government propose to issue special instructions to the Health Officer, Delhi, to see that the locality is kept clean and not allowed to be made insanitary by the dumping of rubbish, etc. ;
- (e) what steps, if any, have so far been taken by the Delhi Improvement Trust to improve the insanitary condition of Karol Bagh and particularly the area close to the ridge or near Bhuli Bhatiani ;
- (f) whether Government are aware that the dirty condition of Karol Bagh greatly affects the climate of New Delhi also and unless efforts are made to have the Karol Bagh area equally neat and clean as is New Delhi, the conditions in the latter would not improve ; and
- (g) whether Government are prepared to order the disposal of the dead animals across the Jumna river and have the sanitation of the Karol Bagh locality improved in a satisfactory way ; if not, why not ?

CREATION OF THE APPOINTMENT OF ADDITIONAL CIVIL SURGEON FOR DELHI.

†257. *Mr. Suryya Kumar Som : Will the Secretary for Education, Health and Lands please state :

- (a) when the appointment of additional Civil Surgeon for Delhi was created and what has been the additional cost therefor per year ;
- (b) the circumstances which made the Government of India to agree to this additional appointment in these days of economy ;
- (c) whether Government are satisfied that the Civil Surgeon (Chief Medical Officer), Irwin Hospital, Delhi, has been left with sufficient original work to attend to ;
- (d) if so, how many operations—major and minor separately—were performed by the Civil Surgeon (C. M. O.) during each of the last 12 months and how the same figures compare with those of 1935 and 1936 ;
- (e) the stations in India where there are three Civil Surgeons for as much population as Delhi has ; and
- (f) whether Government are prepared to examine the case afresh and see the desirability of bringing the staff to a minimum ?

Mr. G. S. Bozman : (a) and (b). I invite the Honourable Member's attention to the reply given by Sir Girja Shankar Bajpai to Mr. K. S. Gupta's starred question No. 1710 on the 14th April, 1939. The post of the Additional Civil Surgeon costs approximately Rs. 10,000 per year.

(c) Yes.

†Answer to this question laid on the table, the questioner being absent.

(d) I have asked for the information and will furnish a reply as soon as it is received.

(e) There is one Civil Surgeon for New Delhi who moves to Simla when a large proportion of the population of New Delhi also moves there. The true comparison, therefore, is as regards the two Civil Surgeons in Old Delhi. There are at least four towns with a lower population than Old Delhi where there are two senior medical officers.

(f) Government consider that the present staff is the minimum and no new facts have been brought to their notice which call for a reconsideration of the matter.

OPENING OF MORE AYURVEDIC AND UNANI DISPENSARIES IN NEW DELHI.

‡258. *Mr. Suryya Kumar Som : Will the Secretary for Education, Health and Lands please state :

- (a) whether on the permanent location of the Government of India offices at New Delhi from next October, the New Delhi Municipal Committee have considered the desirability of opening more *Ayurvedic* and *Unani* Dispensaries in a place to serve the Minto Road area and the new locality behind the Model School, New Delhi ; and
- (b) if the reply to part (a) above be in the negative, whether Government propose to do so now ?

HOLDING OF AUTUMN SESSIONS OF THE LEGISLATIVE ASSEMBLY.

†259. *Mr. Suryya Kumar Som : Will the Honourable the Leader of the House please state :

- (a) whether Government are aware that the proposal to hold the autumn Session of the Legislative Assembly at New Delhi sometime after the middle of September in future would afford very little intervals between the autumn and the winter Sessions ; and
- (b) whether Government are prepared to consider the desirability of holding the future autumn Sessions from early September or the end of August ; if not, what the difficulties are ?

The Honourable Sir Muhammad Zafrullah Khan : (a) It is contemplated that future autumn Sessions will open on such date in September, whether before or after the middle of that month, as will ensure their completion by the first week of November, allowing for a break for the Dusehra holidays. Government do not consider that the interval between the two Sessions will be unduly short.

(b) The possibility of the autumn Session opening early in September is not excluded. The commencement of the Session in August would be inconsistent with the decisions of Government in regard to the Simla exodus.

†Answer to this question laid on the table, the questioner being absent.

‡For answer to this question, see answer to question No. 254.

SHORT NOTICE QUESTION AND ANSWER.

CONVENTION OF THE ANGLO-INDIAN SEAT IN THE LEGISLATIVE ASSEMBLY FROM A NOMINATED TO AN ELECTED ONE.

Mr. J. D. Boyle (on behalf of Lieut.-Colonel Sir Henry Gidney) : Will the Honourable the Leader of the House please state whether it is a fact that it is the intention of Government to convert the Anglo-Indian seat in the Central Legislative Assembly from a nominated seat, as it is at present, to an elected one ?

The Honourable Sir Muhammad Zafrullah Khan : No.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly : Sir, the following Message has been received from the Council of State, which reads as follows :

“ Sir, I am directed to inform you that the Council of State at its meeting held on the 18th September, 1939, agreed without any amendment to the following Bills which were passed by the Legislative Assembly at its meetings held on the 4th, 5th and 8th September, 1939, namely :

1. A Bill to provide for certain matters in connection with the taking of census ;
2. A Bill further to amend the Indian Salt Act, 1882, for certain purposes ;
3. A Bill further to amend the Code of Civil Procedure, 1908, for a certain purpose ;
4. A Bill further to amend the Indian Tea Cess Act, 1903, for a certain purpose ;
5. A Bill to make the provision referred to in sub-section (1) of section 120 of the Government of India Act, 1935 ;
6. A Bill further to amend the Indian Tariff Act, 1934, for a certain purpose, and to validate the levy and collection of certain duty under that Act ; and
7. A Bill to amend the Law of Evidence with respect to certain commercial documents.”

THE DEFENCE OF INDIA BILL.

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the Bill to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences, as reported by the Select Committee. The House will now deal with clause 10. Pandit Lakshmi Kanta Maitra was moving his amendment No. 62* yesterday.

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhamadan Rural) : Sir, before the House adjourned yesterday, I was trying to show that the provision contained in sub-clause (3) of clause 10 of the Bill is not intended to further the cause of justice in as much as it would create difficulties in the way of successful defence of an accused, who might be placed under restraint, before being placed before a

*“ That sub-clause (3) of clause 10 of the Bill be omitted.”

Special Tribunal. In this connection, I pointedly drew the attention of the House to the practice that prevails in the trial of sessions cases where questions of adjournment seldom arise, as there are preliminary proceedings which rule out all possibility of asking for adjournments. But the same considerations will not apply to people who may be placed on trial before a Special Tribunal. In the elaborate provisions for the constitution of Special Tribunals as also for the trial of offences, provisions have been made in this Bill, which make a further departure from those that obtain in the Criminal Procedure Code. I do not understand, Sir, why the inherent right which all courts possess in this country of granting or refusing an adjournment should be circumscribed by a mandatory provision like this. I want to make it perfectly clear that it is absolutely necessary to see that ultimately justice is done. These provisions might promote despatch or expedition, but this will be at the cost of justice. I believe, Sir, that when we provide in a substantive sub-clause that a special Tribunal shall not be bound to grant an adjournment, however much you may try to modify it by the words that follow it, it will greatly prejudice the minds of the members of the Special Tribunal and they may be led to think that they are required to speed up trial, and not to comply with those forms of procedure which are really great safeguards for the accused in the trial of criminal offences. I think, Sir, it is not justice,—rather it is a travesty of justice,—to deprive these courts, I mean the special Tribunals, of their power of exercising free discretion by fettering them with a provision like this. It will not serve the ends of justice, rather it will end justice. Sir, there is a peculiar atmosphere, as we all know, in law courts—where the judges sit in summary jurisdiction; they feel that they can make short work of the forms of procedure laid down and there is always a feeling of insecurity, it may be reasonable or unreasonable, in the minds of the accused,—a haunting sense of insecurity that justice will not be done. It is for that purpose, Sir, that I want the deletion of this sub-clause. Sir, mere speedy disposal of cases does not inspire confidence in the public mind when justice is not done. I am reminded of a case in which the aggrieved party pathetically shrieked out : “ *Huzoor, insaff keejeeyae* ” ; and promptly came the reply from the Court “ *Mai file-saff ke liye hun*, “ *Mai insaff karne ke liye nahi hun* ”. This practice of scavenging the files by Judges is not unknown in this country.

An Honourable Member : Judges also do scavenging ?

Pandit Lakshmi Kanta Maitra : I am not making any reflection, Sir, files sometimes.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member cannot make any reflection on the Judges.

Pandit Lakshmi Kanta Maitra : I am not making any reflection, Sir,

Mr. President (The Honourable Sir Abdur Rahim) : He is making a reflection.....

Pandit Lakshmi Kanta Maitra : I am speaking of some Judges.

Mr. President (The Honourable Sir Abdur Rahim) : He cannot do that.

Pandit Lakshmi Kanta Maitra : Very well, Sir. What I say is that some judges have an inordinate zeal for speedy disposal of cases in total disregard of how it may affect the accused awaiting trial before them. Therefore, I submit that this provision is wholly uncalled for, it is redundant, and will serve no useful purpose except that it will create misapprehension in the minds of the accused. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That sub-clause (3) of clause 10 of the Bill be omitted.”

The Honourable Sir Muhammad Zafrullah Khan (Law Member) : Sir, I was rather surprised to hear from the Honourable the Mover that the speedy disposal of cases causes dissatisfaction even though justice may be done.

Pandit Lakshmi Kanta Maitra : At the cost of justice.

The Honourable Sir Muhammad Zafrullah Khan : I heard the Honourable Member say, even though justice may be done.

Mr. M. S. Aney (Berar : Non-Muhammadan) : He never said that. You have misheard him.

Pandit Lakshmi Kanta Maitra : Did not the Honourable Member hear me ? I am always very loud.

Mr. President (The Honourable Sir Abdur Rahim) : But still the acoustics of the House are very bad.

The Honourable Sir Muhammad Zafrullah Khan : I agree that dissatisfaction would be caused wherever injustice is done, irrespective of the fact whether the trial was speedy or protracted, but on the question whether people prefer a protracted trial to a speedy trial one has always heard that justice delayed is justice denied. Therefore, everything that helps a speedy and efficient disposal of a case, provided no injustice is done, ought to be welcome.

Dr. P. N. Banerjee (Calcutta Suburbs : Non-Muhammadan Urban) : That is a big proviso.

The Honourable Sir Muhammad Zafrullah Khan : Does the Honourable Member object ?

Dr. P. N. Banerjee : It does not always take place.

The Honourable Sir Muhammad Zafrullah Khan : The presumption ought to be that people who are placed in these responsible positions would discharge their duties efficiently and with a full sense of their responsibility. In any case I do not see what grievance the Honourable the Mover has against the clause. It does contemplate that there shall be no unnecessary adjournments.....

Pandit Lakshmi Kanta Maitra : Where is that provision here ?

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has already spoken. He should have taken that point.

The Honourable Sir Muhammad Zafrullah Khan : I said the clause does contemplate that there shall be no unnecessary adjournments.

Pandit Lakshmi Kanta Maitra : I wanted to know from the Honourable Member where that provision is which he is referring to. I am perfectly entitled to ask him that.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has already made his speech.

The Honourable Sir Muhammad Zafrullah Khan : Very good. If the Honourable Member thinks that that meaning does not underlie the clause, may I assume the contrary that the clause contemplates that there will be unnecessary adjournments, in which case the Honourable Member can have no objection to the clause. I was stating his objection and I suppose that is the grievance—that the clause contemplates that ordinarily there will be no adjournments, but it does provide that where in the opinion of the tribunal it is necessary to adjourn a trial in the interests of justice an adjournment shall be granted. Expressed in that way, I really do not see what grievance the Honourable Member has. Does he want that ordinarily there shall be adjournments whenever the accused person says that the trial should be adjourned for his convenience? He has raised one specific point that an accused person ~~in~~ he hears the substance of the prosecution case against him will not know how to meet the charge and, therefore, will not be able to cite and summon his witnesses. I am certain that whenever that contingency arises there is bound to be an adjournment to enable the accused person to put in a list of his witnesses and to have them summoned to give evidence. That is one of the cases where the interests of justice will require that there should be an adjournment. There has been a good deal of criticism of judges and magistrates during the course of these debates, but, after all, we must assume that, though possibly there may be some irregularity, occasionally, —human frailty I suppose is to be met with in all walks of life—the ordinary, normal, presiding judge in a court will do his duty conscientiously. That being so, and adjournments being provided for wherever the interests of justice demand, I do not think that anything further is necessary.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That sub-clause (3) of clause 10 of the Bill be omitted.”

The motion was negatived.

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : Sir, I beg to move :

“ That part (iii) of sub-clause (7) of clause 10 of the Bill be omitted.”

This clause lays down the procedure which will be adopted by the tribunal. It is said :

“ The Provincial Government may, by notification in the official Gazette, make rules providing for—

(iii) the procedure generally to be followed by Special Tribunals, where no procedure is prescribed by this Act.”

Two points arise. One is whether the Bill has provided the procedure which will be adopted by the tribunal, and the second would be whether this Bill has made any provision in case no procedure is prescribed,—what procedure to follow, whether any provision has been made with regard to that absence of procedure also. If both are laid down in this Bill, then I do not think that there is any necessity for empowering the Provincial Governments to make rules when there are no rules, as the Bill itself provides for that. On the first point whether a procedure and an exhaustive procedure has been provided for the tribunals in this

[Mr. Lalchand Navalrai.]

Bill or not, we find the procedure laid down here,—how this tribunal will be constituted, how it will sit and where and at what time it will sit. Further, it is provided how they will conduct the cases and take down evidence—that has also been provided, though in a summary manner, with some exception in cases where the offence is punishable with death or transportation. Then, coming down, we find procedure regarding adjournments. Then, we find that if the accused does not appear, then also there is a procedure laid down. Then, in case of a difference of opinion between the members of the special tribunal there is a procedure laid down. Then, it is also laid down what procedure should be followed if an accused is prevented from attending throughout the trial. Therefore, I submit that almost all the procedure has been laid down. There is a second point also which conclusively answers the proposal that this new amendment giving power to the Provincial Government does not arise at all. If you read sub-clause (8) of this clause, you will find that the special tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or the rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates. Consistently with this, my second amendment comes in, “or by rules made thereunder” being omitted. I say, this part (iii) is redundant and unnecessary.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That part (iii) of sub-clause (7) of clause 10 of the Bill be omitted.”

The Honourable Sir Muhammad Zafrullah Khan : I accept the amendment. There will have to be a consequential amendment, transferring the “and” at the end of sub-clause (ii) to the end of sub-clause (i).

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That part (iii) of sub-clause (7) of clause 10 of the Bill be omitted.”

The motion was adopted.

Sir George Spence (Secretary, Legislative Department) : Sir, I move as a consequential amendment :

“ That in sub-clause (7) of clause 10, the word ‘and’ at the end of part (ii) be transferred to the end of part (i).”

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (7) of clause 10, the word ‘and’ at the end of part (ii) be transferred to the end of part (i).”

The motion was adopted.

Mr. Lalchand Navalrai : Sir, I move.....

The Honourable Sir Muhammad Zafrullah Khan : May I point out that this is not really consequential. There are still parts (i) and (ii) under which rules may be made.

Mr. Lalchand Navalrai : Then, I do not move this amendment.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 10, as amended, stand part of the Bill.”

Sardar Sant Singh (West Punjab : Sikh) : Sir, though a small mercy has been shown by the Government in accepting the amendment just now moved by my colleague, Diwan Lalehand Navalrai, and though some amelioration has been done by accepting the amendment of Sir Muhammad Yamin Khan yesterday, where it has been made incumbent upon the special tribunals to take down the evidence at length in certain cases punishable with more serious punishments, yet I find myself unable to agree to the clause as it stands. I will oppose this clause not because I want to unnecessarily obstruct the passage of this Bill but because I find myself unable to support a tribunal which refuses to record the evidence of the witnesses in full. My experience at the bar...

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has told his experience so often that everybody remembers it.

Sardar Sant Singh : I am entitled to bring to the notice of the House my experience of the summing up of the evidence and the later developments of interpretations which are placed upon the evidence when the case comes to be summed up both by the presiding officer as well as the counsel on either side. Certain points which are regarded as of very little importance during the course of the trial come to play a deciding part in the disposal of the case one way or the other. Therefore, I am not irrelevant or out of order when I say that the recording of the evidence in full is a matter of vital importance both for the prosecution as well as the defence.

My Honourable friend, the Leader of the House, from his long experience at the bar, must be aware that a proper appreciation of the evidence is only possible when the judge or counsel sits at home and reads the whole evidence in a connected form. In my own experience, many judges, when they came prepared fully with the record of the case, discover that they did not pay full attention to a particular point which proved to be of the utmost importance and turned the scale one way or the other. In a recent murder case, the judge had come fully prepared with the records and yet a simple point in the *post mortem* examination brought out in the medical evidence was omitted by him. The stomach of the murdered person was found full of slightly digested food. The judge did not pay attention to this small matter in the evidence of the medical man. Ultimately, in cross examination, it was brought out from the eye witnesses that the deceased had not taken food at the time when he was alleged to have been murdered. Later on, by comparing the medical evidence with the statement of the alleged eye witnesses it was proved to the satisfaction of the judge that all eye witnesses were making a false statement and that the time and place of the murder were found to be absolutely false. This small piece of evidence turned the scales in favour of the accused. Now, here is a point which might have been considered an irrelevant piece of evidence but which was of the utmost importance in deciding the fate of the case one way or the other. But that was a piece of evidence that turned the scale in favour of the accused and against the prosecution and proved the prosecution version to be false. So, Sir, to say that the tribunal will be of such an all-embracing intellect and of such an all-embracing intelligence that they would not miss any point and would appreciate the trend of the cross-examination of the

[Sardar Sant Singh.]

defence counsel or of the examination of the public prosecutor is to say something which is not correct in fact. Therefore, so long as this provision remains in this clause that the tribunal shall not be bound to take in full the evidence of the prosecution witnesses or defence witnesses, my submission is that this will amount to a dangerous and a mischievous provision. In the face of such a provision I would not like to support this clause and I, therefore, oppose this clause as it stands.

The Honourable Sir Muhammad Zafrullah Khan : Sir, it is rather hard to be accused by Sardar Sant Singh of failure to respond to non-official suggestions with regard to this clause when the actual situation is that only three amendments were moved to this clause, all from non-official Benches, two of which have been accepted by Government, and the only one that Government have been unable to accept was an amendment to the clause which provides that there shall not be unnecessary adjournments. I really do not see what grievance the Honourable Member has over the attitude of Government in respect of this clause.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 10, as amended, stand part of the Bill.”

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Clauses 11 and 12 were added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 13 stand part of the Bill.”

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That for sub-clause (2) of clause 13 of the Bill the following be substituted :

‘ (2) The provisions of sections 410, 418, 419, 420, 421, 422, 423, 426, 428, 429, 430 and 439 of the Code ‘.....’ ”

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member does not say what Code or what Act ?

Pandit Lakshmi Kanta Maitra : The Criminal Procedure Code. Sir, I move :

“ That for sub-clause (2) of clause 13 of the Bill the following be substituted :

‘ (2) The provisions of sections 410, 418, 419, 420, 421, 422, 423, 426, 428, 429, 430 and 439 of the Criminal Procedure Code shall apply to sentences passed by the Tribunal ‘.”

Sir, on the subject-matter of this amendment we have already had a very detailed general discussion in connexion with the other amendments just disposed of. So I simply move this amendment now. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That for sub-clause (2) of clause 13 of the Bill the following be substituted :

‘ (2) The provisions of sections 410, 418, 419, 420, 421, 422, 423, 426, 428, 429, 430 and 439 of the Criminal Procedure Code shall apply to sentences passed by the Tribunal ‘.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, the attitude of Government in regard to this motion has been made sufficiently clear during the debate, but, incidentally, I might point out that the acceptance of this amendment would render some of the other provisions of the Bill which have already been accepted by the House inconsistent with this clause, for instance, sections 426 and 428 which refer to revision and appeals.....

Mr. M. S. Aney : That has yet to come—about appeals ?

The Honourable Sir Muhammad Zafrullah Khan : But apart from that, whether they would or would not be inconsistent, Government feel that the modifications which they have made in the procedure in the clauses are absolutely necessary.

Sardar Sant Singh : Sir, clause 13 of the Bill is sub-divided into three sub-clauses. I have no quarrel with the first clause. As regards the second clause, this is one of those clauses which takes away the right of appeal,—not only the right of appeal but the right of revision even, and it supersedes the jurisdiction of the High Court in its entirety. The amendment of my Honourable friend relates to the application of those sections of the Criminal Procedure Code which deal with the provisions relating to appeals from the convictions of a subordinate trial court to a higher court. I do not think the Honourable the Leader of the House was right in saying, when he referred to the fact that this amendment is inconsistent with any of the provisions referred to already.....

The Honourable Sir Muhammad Zafrullah Khan : I corrected myself.

Sardar Sant Singh : We made it clear on the point that all the sections quoted in this amendment refer to the right of appeal and the right of revision against the order passed by the trying magistrate. There are two aspects of this question. One aspect is this, that the very existence of a right of appeal against the orders of a trial court has a salutary effect, a salutary check upon the idiosyncracies of a trying magistrate. If some of those idiosyncracies have not been found in the trial of the most executive-minded officer, this is due to the existence of this check in the Criminal Procedure Code. Again, there are occasions when in the hurry of the moment or in the heat of the atmosphere prevailing all round on account of certain circumstances that have arisen in the country, the trying magistrate thinks that he is doing right and probably he might be honestly feeling that he is doing right, but he does not do justice in the sense of what is called legal justice. He may be influenced by extra-judicial considerations, by information received from sources other than those brought to him in the course of the trial and, thus, in his zeal of doing substantial justice or sometimes mis-named moral justice, he may be doing injustice in reality to the accused. Therefore, Sir, the existence of a provision of appeal against this order is a salutary check upon such idiosyncracies.

The second point in respect of this question is that human institutions are fallible at the best. The most conscientious magistrate may err. To err is human, and for this purpose it is necessary to provide for revision or for review of the orders passed by such a magistrate. No doubt there will be cases in critical times when the ordinary functions of a court may be reduced to a more speedy method, but that

[Sardar Sant Singh.]

MR. PRESIDENT :

speedy method does not mean that we should arm the Executive with powers which are not necessary. I hope the Government of India will agree with me that they are not in favour of doing away with the judicial methods entirely. They may need summary trials, they may need quick disposal of cases, but not with a view to doing injustice to persons brought before such courts. Therefore, Sir, looking at it from all aspects it is absolutely essential not only for the accused alone but for the executive Government, in their own interests, that they should have this healthy check and safeguard provided in the Bill itself. The present provision is of such a drastic nature that one fails to understand how this provision will help the prosecution of the war. No doubt, a concession was made in the Select Committee and we find in the clause as it stands now that the right of appeal has been conceded in cases where the sentence of death or transportation for life has been passed. But may I ask why the same concession should not be allowed where the sentence of ten years' rigorous imprisonment or even five or seven years' rigorous imprisonment is passed? Is the duration of imprisonment and the restriction of liberty which it involves are so negligible factors that there should be no right of appeal or correction by the higher court? After all, why should the Government of India distrust their own judiciary sitting in the highest court in the land, I mean, the Judges of the High Courts.

The Honourable Sir Muhammad Zafrullah Khan : You do not trust them.

Sardar Sant Singh : It is all very well for the Honourable Member to say that I do not trust the High Court Judges.....

The Honourable Sir Muhammad Zafrullah Khan : What is the use of taking an appeal to a Tribunal which you do not trust?

Sardar Sant Singh : It ill suits the Government of India to say that they have no faith in the Judges of the highest courts in the land.

The Honourable Sir Muhammad Zafrullah Khan : The Government of India have complete faith not only in the Judges of the High Courts but also in the Judges who may be appointed to these Special Tribunals.

Sardar Sant Singh : I am glad to hear that the Government of India have been cornered into making a statement that they have complete faith in the Judges of the High Court. Then, why not allow this right of appeal? What prevents you from doing it?

The Honourable Sir Muhammad Zafrullah Khan : Because you have no trust in them and you would not be satisfied even then.

Sardar Sant Singh : I may tell you that I have very little faith in the Judges in India when they are trying political cases.....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member should not go on discussing the Judges like that.

Sardar Sant Singh : Sir, when the Leader of the House invites a reply, what else can I do?

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must not cast any reflection on the Bench. It is against the rules.

Sardar Sant Singh : Very well, Sir. Apart from this wordy tug-of-war with the Leader of the House I want to ask him if he has faith in the Judges of the High Courts, why does he not provide the right of appeal to the High Court? What prevents him from giving us the right of appeal? We want the right of appeal to the Judges in which they say they have faith, but their conduct is just the reverse of their professions. They profess one thing and do another thing. How do they reconcile the two positions? We do not want anything else. We have agreed to the curtailment of the procedure: we have agreed to the doing away of the commitment proceedings: we have agreed to many other things in their interests: and yet they are not agreeing to give us a right of appeal to the very Judges whom they have appointed and in whom, they say, they have faith. This position is inconsistent. Therefore, I say that if they really mean what they say, then their professions ought to be consistent with their conduct and they should accept this amendment and grant us the right of appeal to the Judges. My submission is that this is a provision which safeguards to a great extent the liberties of the people. This is a provision which safeguards the public from the acts of terrorism that may be committed in the name of the Defence of India Act as they were committed under the Defence of India Act of 1915. I want to see that they should go on with the successful prosecution of the war. I have no quarrel with them on that point. I have made this point abundantly clear today and yesterday. But I do not want under the guise of the successful prosecution of the war for which this Defence of India Act is apparently meant that they should terrorise my countrymen in India. I, therefore, ask them once more with vehemence to reconsider their position. They cannot expect us to hand over our country to a regime of military law or martial law under the pretence of the successful prosecution of the war. We are willing to go with them on that point as far as we can but we are not willing to hand over the country to martial law. I would ask the Government of India to be more responsive, to be more considerate of the feelings of the people, and to be more judicially-minded than they are at present. Therefore, I would say that this is an essential and a vital amendment and we on this side of the House regard it as a matter of great importance. On this point we are at one with the amendments tabled by the Muslim League Party and I am sure the Muslim League Party will now get up and support this demand of ours for a right of appeal against all sentences, irrespective of the fact whether they are for a few years or whether they are for transportation of life or death. Sir, I support the amendment.

Mr. M. S. Aney : Sir, this is a very crucial clause. I can understand an emergency measure providing the doing away with the detailed procedure and with provisions that are likely to delay the justice. I can understand all that, but if we are anxious that, in spite of the handicaps that exist, the Special Tribunals should mete out justice, then there must be some kind of safeguard provided in the Act itself. It has been already argued that the right of appeal by itself is an immense check and that the judgment which a particular Judge is going to write is likely to be appealed against before some other Tribunal has a very salutary effect upon the Judge himself and, therefore, he is in a way required to look into the matter more carefully than he would otherwise be inclined to

[Mr. M. S. Aney.]

do. When a man knows that whatever he does is final, then it all depends upon the temperament of the man how to deal with the matter. If he is really a judicially-inclined man, he might see that there is an immense responsibility hanging on him and he will very conscientiously go into the whole matter. But if he is a light-hearted man, as sometimes we find some Judges to be, then he may not be inclined to look into the matter so seriously as he should do. Therefore, the right of appeal is an important thing. As a matter of fact, the importance of the right of appeal has been recognised in a way by the Select Committee itself. If we have to put implicit confidence in the presiding Judges, where was the need for providing a right of appeal in the case of those accused persons who will be sentenced to transportation of life and death? So, it is recognised that at least in certain cases it becomes necessary that the right of appeal must be conceded. It implies that the possibility of an error of judgment does exist and, therefore, a safeguard in the shape of a right of appeal is deemed necessary. Therefore, I want to know from my Honourable friend, the Leader of the House, as he found it necessary to provide for some kind of right of appeal in the case of certain accused who will be tried by the special tribunal, whether he would extend his mind a little further and apply the same kind of reasoning and then I am sure he will see that it is also necessary to provide for appeal in the case of other accused who will be awarded punishment of imprisonment, short of death or transportation for life. Even if his broad-mindedness and sense of justice, sitting as he is as the custodian of the precious lives of the people, do not permit him to go so far as to provide a right of appeal, I expect that he would at least grant the right of revision to people who will be awarded such punishment. Some such amendment should have been brought by him at least to meet the ends of justice, but I find that he is sitting adamant, he is sitting tight in his seat and he is not thinking of the matter at all. I want him to consider carefully the arguments which induced him to grant the right of appeal in the case of an accused who will be given transportation for life or death sentence. If he sees some good reasons behind it why does he not think that at least a right of revision should be left open to those who will be awarded similar punishment because, thereby, he concedes the possibility that the Special Tribunal is likely to commit an error of judgment. If the Special Tribunal can commit an error of judgment in the case of those who are sentenced to death or transportation for life, it is the same Tribunal which must be considered to be possessed of the same weakness which may lead it to commit the same error of judgment in the case of the other accused also. I appeal to my Honourable friend, the Leader of the House, to see that this precious right of revision at any rate is conceded in this provision. If he cannot show a concession like that, then it would be necessary for us to think what we should do with this Bill as a whole. In the absence of any safeguard like that, I think it is impossible to leave matters as they stand and to delude ourselves into the belief that we have done justice to the people who will be unfortunate enough to be tried by this Special Tribunal. I have thrown the hint and I leave it to the Honourable the Leader of the House to take up that hint or reject it as he has done before in regard to so many of our suggestions.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, I want to make one short observation. The safeguards contained in these sections of the Criminal Procedure Code enumerated in this amendment have always been considered to be essential to the protection of the accused even when they are tried under the ordinary procedure in an ordinary court of law normally. Therefore, I think these safeguards are all the more necessary in summary trials by summary courts.

(At this stage, Mr. Umar Aly Shah got up to speak).

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable

12 NOON. Member is not in his seat and he cannot address the House except from the seat allotted to him.

The question is :

“ That for sub-clause (2) of clause 13 of the Bill the following be substituted :

‘ (2) the provisions of sections 410, 418, 419, 420, 421, 422, 423, 426, 428, 429, 430 and 439 of the Criminal Procedure Code shall apply to sentences passed by the Tribunal ’.”

The Assembly divided.

AYES—8.

Aney, Mr. M. S.
Banerjee, Dr. P. N.
Datta, Mr. Akhil Chandra.
Lalchand Navalrai, Mr.

Maitra, Pandit Lakshmi Kanta.
Malaviya, Pandit Krishna Kant.
Parma Nand, Bhai.
Sant Singh, Sardar.

NOES—43.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.
Aikman, Mr. A.
Aiyar, Mr. T. S. Sankara.
Bewoor, Sir Gurunath.
Bhandarkar, Mr. K. Y.
Boyle, Mr. J. D.
Bozman, Mr. G. S.
Buss, Mr. L. C.
Campbell, Mr. D. C.
Caroe, Mr. O. K.
Clow, The Honourable Sir Andrew.
Crofton, Mr. D. H.
Dalal, Dr. R. D.
Dulpat Singh, Sardar Bahadur Captain.
Gorwala, Mr. A. D.
Greer, Mr. B. B. T.
Hedson, Mr. D. C.
James, Mr. F. E.
Kamaluddin Ahmed, Shams-ul-Ulema.
Khaleeli, Mr. A.
Khan, Mr. N. M.
Khurshaid Muhammad, Khan Bahadur Shaikh.

Kushalpal Singh, Raja Bahadur.
Mackeown, Mr. J. A.
Miller, Mr. C. C.
Mudaliar, Mr. C. N. Muthuranga.
Mukerji, Mr. Basanta Kumar.
Nehru, Mr. B. K.
Rahman, Lieut.-Colonel M. A.
Raisman, The Honourable Sir Jeremy.
Roughton, Mr. N. J.
Scott, Mr. J. Ramsay.
Shahban, Mian Ghulam Kadir Muhammad.
Sheehy, Mr. J. F.
Sher Muhammad Khan, Captain Sardar Sir.
Sivraj, Rao Sahib N.
Spence, Sir George.
Sukthankar, Mr. Y. N.
Talukdar, Mr. J. N.
Thorne, The Honourable Mr. J. A.
Wakely, Mr. L. J. D.
Zafarullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

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Pandit Lakshmi Kanta Maitra : Sir, before Mr. Lalchand Navalrai moves his amendment No. 66, I may be allowed to move my amendment which provides for appeals against any sentence of imprisonment exceeding five years. If mine is carried the other one may not be necessary.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair does not know if Mr. Lalchand Navalrai wishes to move his amendment or not.

Mr. Lalchand Navalrai : Yes, Sir, I will surely move it. But before doing so I should like your permission to move another amendment of one or two words in the clause. I submit that after the word "a person" in the first line of clause 13 (2).....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has not given notice as required, and cannot move it.

Mr. Lalchand Navalrai : Sir, I move :

"That in sub-clause (2) of clause 13 of the Bill, after the word 'life' the words 'or imprisonment for a term which may extend to ten years' be inserted."

This clause gives the right of appeal to persons sentenced to death or transportation for life. My amendment, if accepted, would give that right also to persons sentenced to imprisonment extending to ten years.

The Honourable Sir Muhammad Zafrullah Khan : Which may mean everybody.

Mr. Lalchand Navalrai : No, it will not be everybody. It is said every now and then that Government are not going against the public, but doing justice. In the name of that justice, I ask whether this amendment should not be given due consideration. There are several clauses of this Bill where the sentences of death, transportation for life and ten years' imprisonment have been provided, e.g., in clause 5 and clause 6 (b) (4), for the offence of waging war against the King, etc. These three kinds of punishment are intended to be alternative. And when we find that there is not much differentiation between one and the other, why should there be this differentiation in the matter of appeal? Transportation for life is almost as severe as ten years' imprisonment. We are told that transportation for life is equivalent to 14 years, and, with remissions for good conduct and so forth, it comes generally to about 12 years or even less,—may be about 10 years. When transportation for life is given, there is a right of appeal, but if you give him ten years, then he has no right of appeal. There is another anomaly here. The words in the clause are "sentenced to death or transportation for life". If they had put in the words "punishable with" for the words "sentenced to", then it would have been very much better, because there would have been a right of appeal, even if the actual sentence given is ten years. I cannot understand why you do not give a right of appeal for a sentence of ten years. In the very beginning, a judge might have made up his mind beforehand and say to himself "If I give a sentence of death or transportation for life, I shall have to record the evidence *in extenso* and there will be a right of appeal. I shall, therefore, give ten years to avoid all this". I do not say that judges are not conscientious, but you are putting this sort of thing into their heads and making this loophole; and, being human, they might think like this: why, therefore, leave this loophole there?

The system of the Bill has been altered slightly and an amendment has been accepted whereby the judge shall have to record evidence even in the case of an offence punishable in the alternative with ten years—the evidence must be recorded *in extenso*: that was the amendment of Sir Muhammad Yamin Khan. The wording of the amendment is “punishable with death or transportation for life”. Not having these words in this clause 13 would mean that it is only when a man is sentenced to death or transportation for life that he is entitled to appeal. According to the amendment that has been accepted, the judge will have to record the evidence even if the actual punishment awarded is only ten years. But, under this clause, he will have no right of appeal. What is the evidence then recorded for? There is some inconsistency in this. It is no use adducing more arguments, because arguments may or may not weigh, but justice should weigh, and I submit this amendment of mine is very important and should be accepted by Government. I have not lost hope, because sense will prevail after all, and it does not stand to reason that when you have provided for appeal in those cases, you should not give the same right in cases of imprisonment for ten years. The same system should be laid down and there should be an appeal in the case of sentences for ten years. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved:

“That in sub-clause (2) of clause 13 of the Bill, after the word ‘life’ the words ‘or imprisonment for a term which may extend to ten years’ be inserted.”

Mr. Umar Aly Shah (North Madras: Muhammadan): Sir, I rise to support Mr. Lalchand Navalrai's amendment. I do not want to crush British imperialism or the domination of British privilege. War has broken out, and since it may affect India, we are also ready to help the British Government with our brave and martial classes, particularly those 12,000 disciples who are in the spiritual field of culture sought to be developed by me in all the twelve districts of Andhra Desa, out of the 24 districts of the Madras Presidency.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member will speak to the amendment.

Mr. Umar Aly Shah: Speaking on behalf of the great Andhra districts from which I come, I am saying that I have received a message from the Divine Being that our British Government would win in the present war.....

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member's speech is not relevant. He must speak to the amendment before the House.

Mr. Lalchand Navalrai: He says that if my amendment is accepted, the war will come to an end.

Mr. Umar Aly Shah: The spiritual sphere contains many difficult questions which I need not detail here. The Honourable Sir Ramaswami Mudaliar does understand them. I cannot express them properly to the understanding of this House.

[Mr. Umar Aly Shah.]

The next thing is that this Bill contains 19 clauses and some were amended in the Select Committee ; but, unfortunately, the Government did not take any steps.....

Mr. President (The Honourable Sir Abdur Rahim) : The Chair cannot allow the Honourable Member to go on like that. If he has anything to say on the amendment, he can do so.

Mr. Umar Aly Shah : This is a life and death struggle....

Mr. President (The Honourable Sir Abdur Rahim) : Life and death struggle has nothing to do with this amendment. The Honourable Member cannot go on like that : he must speak to the amendment.

Mr. Umar Aly Shah : Yes, Sir. Ten years' imprisonment or transportation for life or hanging are all very severe punishments ; and a judicial officer has to see that in all these cases innocent people are not punished. I say that as soon as the war is over, this Bill should be rejected and thrown out. I do not want the experiences of the Rowlatt Act to be repeated in this country in the name of an emergency, even after the emergency ceases. The Defence of India Act passed by the Imperial Legislative Council continued to be in force for two years after peace was concluded. I do not want this to happen with the present Legislature. Sir, I support the amendment.

The Honourable Sir Muhammad Zafrullah Khan : Sir, I have not been able to follow what the object of the amendment is. The amendment, if accepted, would make the clause read :

“ A person sentenced to death or transportation for life or imprisonment for a term which may extend to ten years shall have a right of appeal ”.

As it stands, it does not make sense, but the Honourable Member may have in his mind one of two objects in moving this amendment. One object may be, as his speech seemed to suggest, that sentences passed under clause 5 should all be appealable. He says there are three sentences provided for in that section, death, transportation for life and imprisonment which may extend to ten years, and he says : it is illogical that you should provide an appeal against a sentence of death and against a sentence of transportation for life, but should not provide an appeal against a sentence of imprisonment which may extend to ten years. He, therefore, says a sentence of imprisonment which may extend to ten years should be subject to appeal. That may be one meaning, but the implication of that is that, if a sentence of six months or one year, or two years or three years is imposed under that clause, the sentence should be appealable.....

Mr. Lalchand Navarai : Which is impossible.

The Honourable Sir Muhammad Zafrullah Khan : It is not impossible.

Mr. Lalchand Navarai : It is impossible to expect that there will be a sentence for six months.

The Honourable Sir Muhammad Zafrullah Khan : Certainly not, but shall we say for two, three or four years ?

I merely want to know what the meaning of this amendment is. Is the meaning this, that any sentence imposed under this section should be subject to appeal, or is the meaning this, that when a sentence of ten years' rigorous imprisonment.....

Sir H. P. Mody (Bombay Millowners' Association : Indian Commerce) : Does it not refer to section 5 exclusively ?

The Honourable Sir Muhammad Zafrullah Khan : The amendment does not refer exclusively to clause 5, but the Honourable the Mover as an illustration referred to clause 5 and said this clause prescribes three kinds of punishments, namely, death, transportation for life, or imprisonment for a term which may extend to ten years.

Mr. Lalchand Navalrai : Will the Honourable Member accept the amendment if it extends not to ten years.....

The Honourable Sir Muhammad Zafrullah Khan : I am replying to the Honourable Member on both assumptions. My first point is, if the meaning is that there should be a right of appeal against all sentences passed under clause five, then he is seeking to give a right of appeal even in cases where the sentence may be any term of imprisonment say to one, two, three, four, five or six years in which case the serious difficulty which arises is this. The appeal, according to the Honourable Member, would then lie to the High Court, and if that is the meaning of the amendment, then not only under clause 5, but against all sentences of imprisonment passed by a special tribunal there will be an appeal to the High Court.....

Mr. Lalchand Navalrai : For such an offence so serious as that ?

The Honourable Sir Muhammad Zafrullah Khan : The question is not about the offence being so serious. The Honourable Member must know that, whatever the seriousness of the offence, appeals under the Criminal Procedure Code, are regulated either with reference to the sentence imposed or with reference to the court which imposes the sentence ; and, ordinarily, appeals against a sentence of imprisonment up to four years lie to the Sessions Court, and not to the High Court.....

Sir H. P. Mody : May I ask a question, Sir ? Are there any offences which are punishable with imprisonment extending to a period of ten years which are not covered by section 5 ?

The Honourable Sir Muhammad Zafrullah Khan : Yes, there may be. I would draw the attention of the Honourable Member to clause 9 (b).....

Mr. Lalchand Navalrai : But not along with transportation.....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has made his speech.....

The Honourable Sir Muhammad Zafrullah Khan : There may be some.....

Mr. Lalchand Navalrai : With transportation or death—there is no lesser sentence—coupled with that. That is what I am drawing the attention of Sir Homi Mody.....

The Honourable Sir Muhammad Zafrullah Khan : The second part of clause 9 empowers a Provincial Government to direct that any offence punishable with seven years' imprisonment or more may be transferred for trial to a Special Tribunal, and, therefore, all sorts of cases might arise. Consequently, there would be a right of appeal against sentences passed by a Tribunal in all cases to a High Court. The High Courts would be snowed under by criminal appeals from Special Tribunals. On the other hand, if the object of the amendment is that against a sentence of ten years' imprisonment, there should be an appeal, then may I use the argument of the Honourable the Mover himself, not that I am afraid that that would happen, there may be sentences of nine years' rigorous imprisonment only. But the real point is this, apart from the meaning of the amendment : the constitution of these Special Tribunals is designedly such that there must be at least one member who is qualified for appointment as a High Court Judge, and if there is only one such member, then at least one other member must have exercised judicial powers as a Sessions Judge or as an Additional Sessions Judge, Chief Presidency Magistrate or Additional Chief Presidency Magistrate. A Special Tribunal will be so constituted because the whole scheme of the Bill is that there should be no right of appeal. The main safeguard against the possible vagaries of the kind of Magistrate to whom Sardar Sant Singh referred, is that there would be three Judges, two of whom will be qualified in that manner, and the third will be a person who has had at least three years' experience as a District Magistrate or as an Additional District Magistrate. It was because there was originally in the Bill no right of appeal that that was laid down as the composition of a Special Tribunal. And in addition now a most valuable concession,—even Sardar Sant Singh described it as a valuable concession in his minute of dissent.....

Sardar Sant Singh : I qualified it to some extent.

The Honourable Sir Muhammad Zafrullah Khan : I had better quote him :

“ We could secure only one valuable right of appeal against the orders of the Tribunal inflicting sentence of death or transportation for life, the wishes of the elected Members of the Congress Nationalist Party and the Muslim League Party on other matters of major importance were defeated by the casting vote of the Chairman..... ”

Sardar Sant Singh : May I ask you to refer to clause 1 ?

The Honourable Sir Muhammad Zafrullah Khan : I am not implying that Sardar Sant Singh did not desire that there should be a right of appeal in all cases. I am saying that, in spite of the original scheme of the Bill being that there should be no right of appeal, a valuable concession was made in providing for a right of appeal in cases where the sentence was death or transportation for life.

Mr. Lalchand Navalrai : Is not this valuable—ten years' imprisonment ?

The Honourable Sir Muhammad Zafrullah Khan : I suppose the reason why on this amendment no Honourable Member has referred to that supposed model of emergency legislation, the Defence of India Act, 1915, is that the Defence of India Act, 1915, did not grant a right of

appeal in any case whatsoever, and, therefore, in this respect the present measure goes much further. One point that was sought to be made by the Honourable the Mover of the amendment was, "you have in clause 9 said that evidence shall be recorded *in extenso* where the offence under trial is punishable with death or transportation for life. Here you have granted the right of appeal only against a sentence of death or transportation". The reason for this difference is perfectly obvious. Evidence has to be recorded before a conviction is arrived at or a sentence is awarded. At that stage the Tribunal can have no idea whatsoever as to who may or may not be convicted at the end of the trial, and in case of conviction what the sentence may be. Therefore, the only manner in which you can provide that in certain cases evidence shall be recorded *in extenso* is by laying down that that shall be done where the offence is punishable with such and such a punishment. But when the state of appeal is reached you know exactly what you are appealing against, and, therefore, it is quite safe to provide that appeals shall lie against certain sentences and that is always the manner of providing for an appeal. I would, therefore, submit that the concession already made is an extremely valuable concession. So far as I am aware, whenever special Tribunals have previously been set up, there has never been a right of appeal at all. I oppose the amendment.

Sir H. P. Mody : I understand that the Honourable the Leader of the House is opposed to the amendment because, as it is worded, it would make appealable an offence which might, after all, be of a fairly trivial character and be punished with imprisonment for six months or a year.

The Honourable Sir Muhammad Zafrullah Khan : No,—on both grounds, I have said that.

Sir H. P. Mody : I hope he is not suggesting that an offence of a very grave character, such as is implied in clauses 5 and 6, namely, an offence committed by a person with intent to wage war against His Majesty or to assist a State at war with His Majesty,—such an offence should not be appealable in any circumstances. If my Honourable friend, Mr. Lalchand Navalrai, had only added these words in his amendment "as covered by section 5 and section 6", then he would have brought within the purview of his amendment only offences of a very grave character, and I submit that Government would be extremely unreasonable in opposing such an amendment. It may be that they have made valuable concessions in the Select Committee. That shows that they have approached this legislation in a reasonable state of mind, but it does not mean that after the Select Committee stage had been passed they should close their minds and hearts to every argument that may be adduced in favour of further amendment. This Bill is of a very drastic character. The country is submitting to it very willingly on the whole, and I submit that the Government would be well advised in themselves initiating an amendment of the character I have suggested, even if it was not covered by anything that my Honourable friend may have placed before the House. After all, offences which are punishable with a sentence of ten years, and which have been committed with intent to wage war against His Majesty or to assist any State at war with His Majesty are extremely serious and the accused person should have a right of appeal in those cases. I suggest

[Sir H. P. Mody.]

to my Honourable friend that he himself should ask your leave, Mr. President, to amend the amendment, and to allow an appeal in very serious cases.

Mr. M. S. Ansy : I have listened to the arguments of the Honourable the Leader of the House with the utmost attention, but I fail to see the distinction that he was trying to draw between offences whose punishment may extend to ten years and offences covered by clause 5. I see the amendment, as it is, is likely to bring in cases which are not covered by clause 5 ; I concede that. I want you to bear in mind as to what right of appeal really constitutes. What is the exact meaning of right of appeal ? It is not intended for mitigation of punishment ; it is intended for clearing the man of his conviction for an offence. If a man who is likely to be punished under clause 5 is guilty of a very heinous offence, then I submit that the Leader of the House should concede that it is a fit case for allowing that man to go in appeal whether the punishment is death or transportation for life or any period that may extend to ten years, because even if he is punished for a lesser period the guilt of the man is there and he has no remedy to get himself acquitted of that offence at all. I submit that in conceding the principle of appeal against transportation the Leader of the House was conceding this fact that here is a heinous offence and the man must have an opportunity of going in appeal and getting his character cleared before a High Court or such other court as will, in due course, be entitled to hear the appeals. Therefore, inasmuch as the right of appeal is conceded in law, not on the ground of quantum of punishment that is given, but on the ground of the nature of the offence of which a man is convicted,—if that principle is conceded I think the Leader of the House will be doing a proper service in allowing this amendment to be amended in the way in which my Honourable friend, Sir Homi Mody, has suggested, namely, putting in clauses 5 and 6 so that cases of heinous offences only shall be deemed appealable and no further cases shall be deemed appealable in that way. The second difficulty which the Leader of the House suggested was : “ Here is a peculiar kind of tribunal that is set up, and if a man is punished for this heinous offence for a period, say, two or three years, who shall hear the appeal ? Under the ordinary Criminal Procedure Code, if that is to be applied here, a judge, other than the High Court, will be entitled to hear the appeal.” But he forgets that the right of appeal provided in the Criminal Procedure Code lays down that an appeal shall be made to a particular judge if it be from the judgment of a particular kind of court. There is no provision whatever in the Criminal Procedure Code to govern the right of appeal against judgments given by Special Tribunals at all. It is not merely the period of punishment that determines it, it is the kind of the tribunal that awards the punishment which should be taken into consideration in fixing the right of appeal to the different courts. So, here, as we have been making rules for procedure and this and that, it would not be very difficult for the Leader of the House to make a provision to regulate the right of appeal against a judgment of the special tribunal in offences coming under clauses 5 and 6.

The Honourable Sir Muhammad Zafarullah Khan : What are the offences that the Honourable Member is thinking of under clause 6 ?

Sir H. P. Mody : Clause 6 (2) (b).

Mr. M. S. Aney : The difficulty that the appeal may go to a different court under the existing Criminal Procedure Code is not an insuperable one. In fact we have been laying down procedure under rules to be framed and those rules can certainly provide that in this case the appeal should go to the High Court only. Clause 12 says that a Special Tribunal shall have all the powers conferred by the Code on a Court of Session. So, if it is properly construed, it means it is a Court of Session and the appeal will go to the High Court but even if there be some doubt on that point it can be made clear by framing appropriate rules and providing a right of appeal. Considering the importance of the right of appeal to a man who will be convicted of heinous offences under clauses 5 and 6, the Leader of the House should not be reluctant to extend the privilege of the right of appeal to all the accused who can be tried under those two clauses. I trust he will bring in some appropriate amendment to cover this. If the words in clauses 5 and 6 be added to the present amendment, that will be suitable or another amendment would be in this very clause. Instead of 'sentenced to death or transportation for life' we can say 'punishable with' and in that way all the cases will be covered. If the Honourable Member accepts the reasonableness of the position we have taken up, then there will be no difficulty in bringing in an appropriate amendment. From the way in which the Honourable Member is listening to my arguments, I think he will be able to meet our wishes on this point.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : There are two kinds of offences in the Indian Penal Code. One class which provides imprisonment upto ten years and the other in which, as an alternative to transportation for life imprisonment upto ten years can be awarded. There are certain offences which give a punishment which is not as an alternative to transportation for life. I will quote the cases which may fall under this category. Mischief with intent to destroy or make unsafe a deck or a vessel of 20 tons burden. This offence under section 437, Indian Penal Code, is punishable with imprisonment for ten years and fine. There is another offence—running a vessel ashore with intent to commit theft. Section 439, Indian Penal Code, also provides imprisonment for ten years and fine. That may or may not be covered by this but these two cases would certainly be entrusted to the special tribunal. There is another case which I will show—house trespass with a view to the commission of an offence punishable with transportation for life and there are many others. In the case of the man running the vessel to shore punishment may be awarded up to ten years but actually it may be only six months or a year. In these circumstances, my submission is that the amendment as it stands is not right and proper. This tribunal will have three judges and the whole idea will be frustrated if you allow a right of appeal in these cases. If there is a single man sitting as a judge, then certainly a right of appeal should be allowed to anybody but when you have three judges sitting, you cannot go on allowing appeals when the sentence may be only for two or three days or till the rising of the court. Therefore, I cannot support the amendment.

Now, I come to the point that Mr. Aney made. That would have been certainly a suitable provision to make by Sardar Sant Singh or somebody else. Instead of the words 'sentenced to death or transportation for life' you may say 'a person convicted of offences described in sections 5 and

[Sir Muhammad Yamin Khan.]

6'. If that had been there, that would solve the difficulty. If the Government will accept such a provision, then we certainly have no objection but I think it is too late to raise it now.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (2) of clause 13 of the Bill, after the word ‘ life ’ the words ‘ or imprisonment for a term which may extend to ten years ’ be inserted.”

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That in sub-clause (2) of clause 13 of the Bill, after the word ‘ life ’, occurring in the second line, the words ‘ or sentence of imprisonment exceeding five years ’ be inserted.”

The whole question of the right of appeal has been exhaustively dealt with on floor of the House and I need not add to or repeat the arguments already advanced. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (2) of clause 13 of the Bill, after the word ‘ life ’, occurring in the second line, the words ‘ or sentence of imprisonment exceeding five years ’ be inserted.”

The motion was negatived.

The Honourable Sir Muhammad Zafrullah Khan : Sir, I would ask you kindly to hold over clause 13 for the present.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair will let the clause stand over now.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 14 stand part of the Bill.”

The motion was adopted.

Clause 14 was added to the Bill.

Clauses 15 and 16 were added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 17 stand part of the Bill.”

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That sub-clause (2) of clause 17 of the Bill be omitted.”

Sir, clause 17 has two parts which deal with the question of protection for action taken under this Bill. Sir, the first part refers to cases of action which will be protected if done in good faith by any officer or person authorised by the Government to exercise the powers under this Bill. I can understand that unless some provision of the nature of an indemnity clause is provided in the Bill or some insurance is made against any risk

or responsibility that may accrue as the result of the exercise of certain powers conferred upon a particular man by the Government, it will be very difficult for the person or authority to give effect to the provisions of the Bill, and to that extent I am prepared to admit that so long as the person acts in good faith under this Bill, he will be protected. But the amendment is directed against the second part which lays down an omnibus provision by which the Government want to be protected against any action sought to be taken against them by any aggrieved party, even though those actions of the Government may entail heavy loss, damage or inconvenience to them. Sir, this is absolutely unjustifiable. If the Government as a whole want that kind of protection, that kind of insurance against all risks that might incidentally follow as the result of the operation of this Bill, then I say all question of justice to the people concerned will be at an end and this omnibus indemnity provision will act as a sort of active encouragement or inducement to the officers to operate the provisions with more than ordinary zeal. There is nothing in the Bill to act as a check upon the reckless exercise of the powers sought to be conferred by this Bill. There is not a single provision anywhere which may be regarded as a sort of deterrent or a safeguard against abuse. On the contrary, there is this provision, couched in the most general terms, protecting not only the officers who would be exercising these powers but also the Government themselves would be delegating this authority to people not connected with them,—protecting the Government themselves, the fountain-head of all these powers, from any action by people who may have a genuine and legitimate grievance against them. Why should there be this provision? So long as such a provision is there, I submit that there will be an endless or unlimited scope for injustice and there will be no chance of redress. It might be argued, of course, that there are some provisions of the nature of giving compensation, but they have a very restricted application, and I am convinced that a provision like this will simply help or promote the abuse of the powers, but will never help the Government in the prosecution of the war. It will create a vast body of ill-will in the minds of the people who would be affected and no useful purpose would be served by its retention. It is opposed to all moral principles,—of which we hear so much in these days. This is opposed to public policy and I, therefore, submit that this complete immunity in the shape of an omnibus insurance against action for all manner of deeds of omission and commission should not be granted to the bureaucratic executive. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That sub-clause (2) of clause 17 of the Bill be omitted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, wherever property is likely to be requisitioned under the provisions of this Bill, there are provisions for making full compensation, so that there can be no apprehension that all sorts of depredations may be carried out under the provisions of this Bill with impunity. That is one thing. Another safeguard is, that the Crown is protected from legal proceedings in respect of any damage caused or likely to be caused only by something which is done or intended to be done in good faith under the Act ; and I would say that in an emergency legislation of this kind, it would be necessary to make a provision of the kind that is made in sub-clause (2).

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That sub-clause (2) of clause 17 of the Bill be omitted.”

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 17 stand part of the Bill.”

The motion was adopted.

Clause 17 was added to the Bill.

Sir George Spence : Sir, I move :

“ That after clause 17 of the Bill the following clause be inserted, namely :

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| <p>18. Every provision of law for the time being in force which gives protection, whether specifically or otherwise to members of His Majesty's military forces or of the police forces in British India from any prosecution or other legal proceedings or from any other liability shall apply also to members of the military or police forces respectively of any Indian State, while attached to, operating with or assisting any of His Majesty's military forces or any police force in British India.</p> | <p>Protection from prosecution, etc., of members of Military and Police forces of Indian States while serving His Majesty.</p> |
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and that clauses 18, 19 and 20 of the Bill be renumbered as clauses 19, 20 and 21 respectively.”

Sir, certain Indian States have already made detachments of their military forces available for employment in British India and it is not improbable that similar arrangements will be made for the employment of members of State police forces. It is obviously essential that members of State military and police forces functioning in British India in pursuance of arrangements of this nature should enjoy the like protection as is accorded by the Statute law of British India to members of His Majesty's army and to members of British Indian police forces, and the object of this amendment is to secure the necessary protection. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That after clause 17 of the Bill the following clause be inserted, namely :

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| <p>18. Every provision of law for the time being in force which gives protection, whether specifically or otherwise to members of His Majesty's military forces or of the police forces in British India from any prosecution or other legal proceedings or from any other liability shall apply also to members of the military or police forces respectively of any Indian State, while attached to, operating with or assisting any of His Majesty's military forces or any police force in British India.</p> | <p>Protection from prosecution, etc., of members of Military and Police Forces of Indian States while serving His Majesty.</p> |
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and that clauses 18, 19 and 20 of the Bill be renumbered as clauses 19, 20 and 21 respectively.”

The motion was adopted.

New clause 18 was added to the Bill.

Original clauses 18, 19 and 20 (19, 20 and 21 as re-numbered) were added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 1 stand part of the Bill. ”

Mr. Akhil Chandra Datta : Sir, I move :

“ That for sub-clause (3) of clause 1 of the Bill the following be substituted :

‘ This section and section 2 shall come into operation at once. The Central Government may by notification in the official Gazette direct that the rest of the Act shall come into force in any province or part thereof on such date as may be specified in such notification ’.”

In moving this amendment, I wish to make a very brief speech. The amendment seeks to substitute sub-clause (3) of clause 1 by this amendment. The difference is this. In sub-clause (3) of clause 1, which is sought to be amended, the provision is :

“ It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf. ”

I take it and I hope it will not be contradicted that it is proposed to bring into operation this Act at once by the requisite notification. The result will be that under sub-clause (3) of clause 1, the Act shall come into force in the whole of India, whereas the amendment that I am moving makes this difference. So far as clauses 1 and 2 of the Bill are concerned, it is proposed that it is important from the point of view of the Government that they should come into operation at once. Now, as regards the rest of the Act, this amendment provides that the rest of the Act could be brought into operation in any province or in any part of a province by a special notification. So, my point is this that all these emergency measures that we have already accepted may be necessary or may not be necessary in any particular province or in any part of a province according to the circumstances prevailing in that province or in that part of the province. There may be lawlessness or heavy crime in one province or in one district of a province, and yet another province or any part of a province may be perfectly peaceful and may not require the operation of these emergency measures. Therefore, as was laid down in the preceding Act of 1915, this amendment provides that in some provinces a portion of the Act shall not come into operation at once, but whenever the Central Government find, either themselves or on the application of a Provincial Government, that there is something wrong in any part of the country, the rest of the Act will come into operation in that province or in that part of the province. That is the object of this amendment. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That for sub-clause (3) of clause 1 of the Bill the following be substituted :

‘ This section and section 2 shall come into operation at once. The Central Government may by notification in the official Gazette direct that the rest of the Act shall come into force in any province or part thereof on such date as may be specified in such notification ’.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, I may be able to meet the Honourable the Mover of this amendment and the House perhaps more than what he would secure by this amendment. The amendment says : “ This section and section 2 shall come into operation

[Sir Muhammad Zafrullah Khan.]

at once". I doubt very much whether you can bring section 2 into operation without being forced to bring some of the other sections into operation. If you do that, I should imagine that that would be a case of swallowing the body and jibbing at the tail. The second portion of the amendment says :

"The Central Government may by notification in the official Gazette direct that the rest of the Act shall come into force in any province or part thereof on such date as may be specified in such notification."

I apprehend that the meaning of that would be that the Central Government would be under the necessity of bringing the whole of the rest of the provisions of this Act into force at one time. So that, I do not think the Honourable the Mover would gain very much. I am prepared to meet him and I hope the House will appreciate the very valuable concession I am about to make to meet the views of the Honourable the Mover which would not have been met by his own amendment if the House and you permit by accepting an amendment to the following effect :

"That in clause 1 of the Bill for sub-clause (3) the following sub-clause be substituted, namely :

'(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint'."

Mr. Akhil Chandra Datta : Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Akhil Chandra Datta : Sir, I beg to move :

"That in clause 1 of the Bill for sub-clause (3) the following sub-clause be substituted, namely :

'(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint'."

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 1 of the Bill for sub-clause (3) the following sub-clause be substituted, namely :

'(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint'."

The motion was adopted.

Mr. Lalchand Navalrai : Sir, I beg to move :

"That in sub-clause (4) of clause 1 of the Bill, the words 'and for a period of six months thereafter' be omitted."

The object of this measure is to give very wide and extensive powers to the executive Government, and it is but right that this Act should remain in force during the continuance of the war. I cannot see why the Damocles Sword should be kept hanging over the public for six

months after the cessation of the war. The object of my amendment is to restore liberty to the people as soon as the war comes to an end, and such powers as we are giving the executive Government should not be continued after the war.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in sub-clause (4) of clause 1 of the Bill, the words ‘ and for a period of six months thereafter ’ be omitted.”

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. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Sardar Sant Singh : Sir, the amendment moved by my friend, Mr. Lalchand Navalrai, should not arouse any controversy because it is entirely redundant to extend this Act to a period of six months after the war. The House is aware that the declaration of war has come by a Proclamation of His Excellency the Viceroy acting as the Crown Representative in India. The termination of the war will come when such Proclamation is made or when the Termination of War Act is passed by this Legislature. The House will be interested to know that on the last occasion although hostilities actually ceased on the 11th November, 1918, the Termination of War Act was passed some time in the year 1921, i.e., three years later ! There were no complaints made on that score and the provision that the Act will continue till the continuation of the war means that the same will automatically cease on the date when the war is officially terminated. Therefore, to say that it will last six months after that is not very desirable and, in the words of the Honourable the Mover, it will keep the sword of Damocles hanging over the head of the country. The present war is expected to take the same course as the last. The hostilities may come to an end and the actual warfare cease with the declaration of truce. Then there is no need to continue this Act for six months after. At the same time I want to inform the House of one important experience which we had after the last war and that is that the most damaging acts under the Defence of India Act of 1915 were done after the cessation of hostilities. The Punjab trouble which was then the subject of a Royal Commission of inquiry amply proved that the Act was employed after the cessation of hostilities for purposes which were in no way connected with the prosecution of the war. I can appreciate the desire of the Executive to settle the after-war problems and may be the after-war reactions after the cessation of hostilities. But I should say that the ordinary and normal functions of Government will be there and if any occasion arises the Legislature is there to pass the necessary legislation. The power under the Government of India Act given to the Governor General and the Governors to make Ordinances are there to meet such a contingency. Therefore, this extension for six months after the war is neither necessary nor desirable. There is only one reason for the Executive Government which can be advanced and that is the habit of tradition. Because

[Sardar Sant Singh.]

this expression was there in the Defence of India Act of 1915 it has probably been embodied here without considering the facts on which past experience should be our guide and give us some wisdom in appreciating the real value of this provision. I consider these words are unnecessary and I support this amendment.

The Honourable Sir Muhammad Zafrullah Khan : Sir, the matter was gone into very carefully in the Select Committee and I made an offer then which I am prepared to repeat now that the termination of this legislation may be worded as the termination of the emergency legislation in the United Kingdom is worded. I have not got that Act here but I will try to get it and frame an amendment to that effect if it is so desired. My impression is that there the termination of the emergency legislation depends upon an Order in Council issued by His Majesty declaring that the war has come to an end. If Honourable Members prefer that phraseology I am prepared to have an amendment drafted that this legislation shall continue in force till six months after such date as the Governor General in Council may by notification declare to be the date of the termination of the war. I am prepared to bring this part of the clause in accord with the corresponding clause in the British Emergency Act.

Sardar Sant Singh : Sir, my friend was not in his seat when I said that India has been declared to be at war by a Proclamation of His Excellency the Viceroy and the termination will be by the same method of Proclamation made by the Viceroy. There can be no other way. Then how does he propose.....

The Honourable Sir Muhammad Zafrullah Khan : That really makes no practical difference in the situation. If the actual declaration or termination of war lies with the Governor General or the Governor General in Council as the case may be, would it really make any practical difference to the Honourable Member if these words to which he objects remain or do not remain in the clause ?

Sardar Sant Singh : The practical difference would be that if you pass a Termination of War Act as you did last time or if you issue a Proclamation declaring that the war has terminated, this Act will not come to an end unless it is repealed or until six months after the termination of the war.

The Honourable Sir Muhammad Zafrullah Khan : Then the Honourable Member may rest assured that if there is no further need of this Act the earliest steps will be taken to repeal it.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (4) of clause 1 of the Bill, the words ‘ and for a period of six months thereafter ’ be omitted.”

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 1, as amended, stand part of the Bill.”

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Honourable Sir Muhammad Zafrullah Khan : Sir, during the lunch interval, we on this side have considered the various points urged by Honourable Members from different parts of the House that the right of appeal given by clause 13 as it stands should be enlarged. This matter has been discussed in great detail and those details must be present to the minds of Honourable Members.

Clause 13, as it stands, gives a right of appeal against a sentence of death or transportation for life passed by a special tribunal. We were very strongly urged to consider the feasibility of providing for a right of appeal against sentences of imprisonment for ten years or over in cases falling within clause 5 and clause 6 (2) (b) of the Bill. I am prepared, with the leave of the House and with your leave, Sir, to have an amendment moved which would confer that additional right of appeal. It will give a right of appeal against sentences of death or transportation for life and of sentences of imprisonment for a term extending to ten years under section 5 of this Bill or under section 5 (4) of the Indian Official Secrets Act as amended by section 6 of this Bill. That would be the practical effect, since section 6 (2) (b) seeks to amend sub-section (4) of section 5 of the Indian Official Secrets Act. I hope that will meet the wishes of the House.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Chair thinks this amendment is welcome to the whole House.

Sir George Spence : Sir, I move :

“ That in sub-clause (2) of clause 13 of the Bill, for the words ‘ A person sentenced to death or transportation for life by a Special Tribunal shall have a right of appeal ’, the following be substituted, namely :

‘ A person sentenced by a Special Tribunal :

(a) to death or transportation for life, or

(b) to imprisonment for a term extending to ten years under section 5 of this Act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act,

shall have a right of appeal ’.”

Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The question is :

“ That in sub-clause (2) of clause 13 of the Bill, for the words ‘ A person sentenced to death or transportation for life by a Special Tribunal shall have a right of appeal ’, the following be substituted, namely :

‘ A person sentenced by a Special Tribunal :

(a) to death or transportation for life, or

(b) to imprisonment for a term extending to ten years under section 5 of this Act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act,

shall have a right of appeal ’.”

The motion was adopted.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is :

"That clause 13, as amended, stand part of the Bill."

The motion was adopted.

Clause 13, as amended, was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Muhammad Zafrullah Khan : Sir, I move :

"That the Bill, as amended, be passed."

When moving for taking the Bill into consideration as reported on by the Select Committee, I drew the attention of the House to the modifications made in the provisions of the Bill by the Select Committee. Equally important and far-reaching modifications have been made in the Bill by the House in the consideration stage. I am happy that as the result of these modifications the Bill has become much more acceptable to certain sections of the House than it originally was. At this stage it is not my intention to comment in detail upon these modifications. As illustrations I may refer to two modifications made one just before the House rose for lunch, and the other after the House met after lunch—I mean the modification made in clause 1 as a result of an amendment moved by you, Sir, which I hope has set at rest a good many of the apprehensions expressed with regard to that clause. When speaking on that amendment I made it clear that Government were prepared to accept an amendment which was very much wider in scope even than the amendment moved by you, and we have just concluded the consideration stage by carrying into effect an amendment which meets the wishes of the House with regard to the right of appeal. We had already in the Select Committee modified the clause relating to the recording of evidence which secures that in all these cases where there may be the possibility of an appeal eventually, the evidence shall be recorded *in extenso*. Several other improvements have also been made in the Bill and, therefore, I do hope that those Honourable Members who at certain stages of the debates were of the view that Government had taken up an uncompromising attitude over this Bill will now be inclined to feel that though every one of the amendments suggested by them has not been accepted, Government have gone a considerable way to meet the wishes of the House with regard to many important features of the Bill. Indeed, Sir, it would have been impossible to accept all the amendments without radically changing the character of the whole of this legislation and rendering it almost useless for the purpose for which it is intended. And may I, at this stage, again assure the House that it is not intended, to begin with, to use every one of these powers with which the Central Government and the Provincial Governments are proposed to be invested by this Bill, unless the contingency justifies and calls for the use of those powers. Take this matter of the Special Tribunals with regard to which many apprehensions have been expressed. Though power is given to Provincial Governments to set up Tribunals of this kind, it is not the intention of the Central Government,—and I am sure the Provincial Governments will also take the same view,—that Special Tribunals must be immediately set up; when the normal judicial machinery of the Province proves inadequate to deal with any

contingency that might arise or where delay in the disposal of certain class of criminal cases might appear to be prejudicial to the interests of the community at large, then only will these Tribunals be set up. Similarly, there are other powers with regard to which there is the same intention that unless the need for them arises they need not as a matter of course be put into effect. On the other hand, there are certain other powers which, as a matter of insurance against lawlessness or mischievous or dangerous activities, must be put into effect immediately in the sense that everybody must know that those kinds of activities will be visited with penalties if they are indulged in. The apprehensions expressed with regard to what I might call the judicial provisions did strike me as extremely exaggerated. Time and again one Honourable Member made appeals to my own experience or knowledge of these matters in the Punjab during the martial law days. In the first place, as I explained at a previous stage, the machinery then set up was not, as alleged by the Honourable Member, set up under the Defence of India Act, but under the Martial Law Ordinances, and there is this real difference between the two situations that the Martial Law Ordinances were designed to meet a state of rebellion where there were those strained relations between a section of the population and the Government, and this legislation is designed to secure the safety of the country, the maintenance of public order to secure the defence of the country and the efficient prosecution of the war. The object is entirely different. On the other hand Honourable Members will realise that under the stress of the emergency with which we are faced and which daily grows worse instead of getting better, there may appear elements in the country which may have to be stringently controlled in the interests of the law-abiding population of the country itself, and that if these powers are not possessed by the Central and Provincial Governments, a great deal of mischief may be done before any kind of adequate remedy could be devised. Sir, I shall not take up any more time in commending this motion to the House that the Bill be now passed.

Dr. P. N. Banerjee : Sir, may I ask a question of the Honourable the Leader of the House ?

Mr. Deputy President (Mr. Akhil Chandra Datta) : Order, order. Motion moved :

“ That the Bill, as amended, be passed.”

Dr. P. N. Banerjee : Sir, yesterday, an amendment of my friend, Sir Muhammad Yamin Khan, was accepted by the Government, No. 50A on the revised Consolidated List. That will remain, but in view of the provision which has now been accepted by the Government, what will be the position ? In sub-clause (ii) of clause 10 of the Bill, after the words “ any trial before the Special Tribunal it shall not be necessary ” the words “ save in cases of trials of offences punishable with death or transportation for life ”, have been inserted. Would you not now add the words..... ?

The Honourable Sir Muhammad Zafrullah Khan : May I explain the position, Sir ? Clause 9 as it stands covers those cases in which the additional right of appeal has been given by amendment of clause 13. The additional right of appeal covers cases where a sentence of ten

[Sir Muhammad Zafrullah Khan.]

years' imprisonment may be imposed under certain clauses. If the Honourable Member will look at the relevant parts of clauses 5 and 6, he will find that cases in which a sentence of ten years' imprisonment can possibly be imposed are cases which are punishable with death or transportation, and, therefore, they are cases in which under clause 9, as it stands, a Special Tribunal is bound to record the evidence *in extenso*.

Sir H. P. Mody : Sir, before I offer a few observations on the Bill as it has emerged from our discussions I would like to congratulate my friend, the Honourable the Leader of the House, very heartily, on the spirit of accommodation he has shown in accepting the amendment which I in common with some of my friends pressed upon his attention. We are glad that he has not allowed petty considerations to stand in the way of meeting a point of view which was held very strongly by this side of the House.

The Bill is of a very drastic character, but it is noteworthy that, barring certain apprehensions which have been legitimately felt about the scope of some of its provisions, the country as a whole has accepted, not merely the principle of the Bill, but also most of its provisions. I venture to think, Sir, that that is entirely due to the fact that in this country, more than in most other countries, passionate sympathy is felt for all oppressed peoples, whether they belong to Abyssinia, China, Czechoslovakia or Poland. Another reason is that while democracy has been dethroned and discredited in a great many countries, in India there is unwavering adherence to its principles, and that, I think, largely arises from the fact that British institutions have left an indelible impress upon the political thought of this country.

Sir, it has been said in the course of the last few weeks that we are fighting the battle of Poland in Poland and in other countries. We are fighting in a sense definitely for their existence, but I think it is equally true to say that we are fighting in the last analysis for our own existence.

Pandit Lakshmi Kanta Maitra : Your existence.

Sir H. P. Mody : Your existence, my existence and the existence of millions of people who are outside this House, and my friend may awake one of these days to a very lively realisation of that fact.

Sir, my Honourable friend, the Leader of the House, just said
 3 P. M. that, while the Bill was drastic enough, it was not intended that either the Central Government or the Provincial Governments should put into effective action any or all of the powers with which they are invested. I hope that in carrying out the many purposes of this Act, the various committees which have in the last few days been set up here and which are being set up in the Provinces, and the many officials who are being entrusted with the execution of these wide powers will try and secure co-operation rather than proceed by the method of compulsion. I am only suggesting that there will be a far easier and far readier response to the war needs of this country if all those whose co-operation is valuable are asked to contribute their brains, their energy and their experience to the common pool. This Bill, amongst other things, confers wide powers on the Central and Provincial Governments in relation to the

activities of industrial and commercial organisations. I hope that no measure of any importance will be undertaken with regard to the exploitation of the resources of this country in money and material without seeking the active co-operation of the interests primarily concerned. In this connection I cannot help thinking that if the Government of India had been more alive, if they had any vision, today this country would have been in a position to make a far greater contribution than it is likely to make of all those resources which go to the successful conduct of a war on a modern scale. But, Sir, no account was taken of the needs of this country as they would be during a period of stress and stringency, and private enterprise was left to do everything that was required to be done in the way of the development of those resources. I hope that this war, at any rate, will be a lesson to those in authority and that everything needful will be done in the way of equipping this country with at least those industrial and material resources which are necessary for the successful prosecution of a war. And a consideration that rises is that, while the Government of India and the Provincial Governments expect response from industrial, commercial and other interests and while I have no doubt, and I speak for the industrial and commercial community, that that response will be very readily forthcoming,—it is necessary that the Government of India and the other authorities concerned should see to it that the legitimate demands and requirements of industrial interests will also be met to the extent that it would make it easier for them to contribute their full quota towards the prosecution of this war. Given a proper spirit, this Bill, however drastic it may be, will create little difficulty in its working, because the whole country stands united today in condemning the ruthless aggression which has been responsible for the tragedies which are being enacted in Europe and I am sure Government will duly appreciate the support which the representatives of the people have accorded in this House to a measure which in less abnormal circumstances the country and the House could never have accepted.

Syed Ghulam Bhik Nairang (East Punjab : Muhammadan) : I am glad that the labours of this House so far as the second reading of the Bill is concerned have come to a successful end. This sense of satisfaction which I venture to express really amounts to saying that we have finished a very difficult task. The circumstances which necessitated that difficult task are really most unwelcome. Nobody can afford to jubilate over the outbreak of war, a war of such a nature and with such potentialities which God forbid may develop into a world conflagration. The very nature of the grave and serious international situation demands that an emergency measure of the kind which we have had to deal with in this House should be undertaken and no one who is alive to a sense of his duties and responsibilities can seriously object to legislation of this kind being placed before the House. I have said that the circumstances which have necessitated this task are really unwelcome and it is for that reason that I do not adopt the usual way of offering congratulations to the Honourable the Leader of the House for successfully piloting this measure through this House. But, most certainly, he deserves the highest compliments for bringing to a successful termination the very arduous task which lay before him. He has shown great ability, sound statesmanship, and a very commendable spirit of

[Syed Ghulam Bhik Nairang.]

accommodation, in discharging the very difficult duties with which he was charged in connection with this measure.

At this stage of the debate on this Bill one thing which I owe to myself and to my Party is to explain the attitude of my Party towards this Bill. This has become necessary on account of a curious charge brought against my Party by one of the Honourable Members speaking yesterday on the floor of this House who went to the length of saying that we had made some sort of pact or alliance with Government and were "sitting mum" as he put it and not interesting ourselves in the many amendments which had been put before the House by his Party and some other Honourable Members. What took place about this Bill so far as my Party was concerned was this. We found that a motion for the consideration of this Bill was coming on and we felt that the time at our disposal was very short. We convened, or rather improvised, a meeting of our Party by securing the attendance of such of the Honourable Members as could meet at an extremely short notice. We read the Bill through, scanned its provisions as best we could, formulated and tabled certain amendments including a motion for reference of the Bill to a Select Committee. When this motion for reference to a Select Committee actually came before this House, it appeared that it was being looked upon by Government as an ordinary dilatory motion, although it was really intended, paradoxical as it may sound, to be both a time gaining and a time saving device. We thought that if the consideration of the Bill started that very day we would be acting in undue haste, so, by somehow inducing the Government to accept the motion for reference to a Select Committee, we could gain some time. On the other hand, if the Select Committee duly considered the many amendments which had been tabled by our Party and other Honourable Members, that would save time, because, otherwise, the discussions on the floor of the House might become very tedious and not lead to quite as satisfactory results as might accrue if we considered all these things in a Select Committee—a few of us sitting together. Now, in order to induce the Government which at first was opposed to the motion for reference to the Select Committee to agree to the motion, I made a statement on behalf of my Party, undertaking to see that if a Select Committee in due course and properly considered our amendments and decided upon them, thereafter there would be no more amendments on behalf of our Party and even speeches will be few and brief. I gave that undertaking on the floor of the House and Government agreed to the reference to a Select Committee. The Select Committee met and all our amendments were duly considered there. Government having accepted the offer openly made on the floor of the House and having acted in the spirit in which we wanted the Government to act, it naturally followed that we also felt bound to carry out our engagement. The implication in calling this a pact or an alliance, although no adjective was used, certainly is that there was something sinister about it. I appeal to you, Sir, and to the House—if a thing is openly done on the floor of the House with all our ears laid on the table, is there anything objectionable or dishonourable about it?

An Honourable Member : Certainly not.

Syed Ghulam Bhik Nairang : We could not persuade ourselves to indulge in heroics and say things like this that although you may pass this Bill today, it should not actually come into force until war has actually broken out in India, that we should wait till the enemy invades India to put this Act into force. But we certainly took care to study the Bill as best we could within the short time at our disposal. We do not claim to possess a monopoly of legal wisdom. We do not pretend to hold a monopoly of patriotism, although we are second to none in patriotism, if you will pardon me for saying so. We give every credit for good faith to those Honourable Members who put forward any amendments or proposals on the floor of the House or advanced any arguments but we certainly expect that the same credit for the same amount of good faith and honesty shall be given to us.

After explaining the attitude and position of my Party towards this Bill, and after making my acknowledgments to the Honourable the Leader of the House for the spirit in which he has discharged the very onerous duties which lay on his shoulders, I wish to say one or two words on points which I am afraid are troubling the minds of some of our friends here. There were amendments for the deletion of clause 2, sub-clause (2) part (xxx) relating to meetings and assemblies and so on. In addition to motions for deletion, there were also certain amendments put forward. It was explained in the Select Committee by the Honourable the Leader of the House that this point would be made clear in the rules and, subsequently, the assurance given by the Leader of the House was actually carried into effect. The rules were properly framed and gazetted. We felt satisfied that the object which we had in view in moving for deletion or for addition of certain words had been achieved but I find that there are still lurking suspicions in the minds of some friends and I do not blame them at all for entertaining those suspicions. Their apprehension is that although at the present moment a certain rule has been framed and duly gazetted and the point appears for the moment to have been cleared yet the rule making power of the Government is not exhausted. Who knows tomorrow this rule may be changed. Another rule which may perhaps entail the consequences which we seek to avoid by the deletion of that part or by a suitable amendment of that part may follow and, therefore, it is not a satisfactory position that we have contented ourselves merely with these rules having been framed and gazetted. I mention this fact merely in order to emphasize what my friend, Mr. Sathar Sait, and I said, in our dissenting note appended to the Select Committee's report. There we said what I repeat now. "We urge that the greatest amount of care should be taken by the Central Government and the Provincial Governments in framing the rules and sanctioning action under the very wide powers given to them by the provisions of the Bill" in the matter of framing the rules and in the matter of conferring powers on any authority or person. We hope that nothing will be done to justify the suspicions which some people entertain today that the law will not be properly worked and that it is likely to lead to serious abuse in the hands of over-zealous or interested or misguided people. Given that care and circumspection on the part of the Central Government and the Provincial Governments, I do hope that this law will work satisfactorily and the end that we all have in view will be achieved. With these words, I support the motion.

Sardar Sant Singh : Sir, I am not in the happy position to offer my felicitations to the Honourable the Leader of the House. I am rather inclined to extend my sympathies to him for the awkward position in which he found himself in having to pilot this Bill. The Leader of the House does not seem to have been independent in either drafting this Bill or in properly carrying out his own wishes in the matter of the several provisions. I suspect that the hand of the Army authorities is visible in some of the provisions of this Bill and, therefore, if he abdicated that noble position of a jurist and an executive officer afterwards....

An Honourable Member from the Government Benches : Rubbish.

Sardar Sant Singh :who says "rubbish" ? He should know. I challenge him if he denies that the Army had nothing to do with the drafting of the Bill, I challenge him on the floor of this House if he denies that.....

The Honourable Sir Muhammad Zafrullah Khan : Sir, the character of this measure is such that every Department of the Government has had something to do with it.

Sardar Sant Singh : I am glad, then, that it is not rubbish as my friend says.

The Honourable Sir Muhammad Zafrullah Khan : Sir, by making that statement, I must not be deemed to accept Sardar Sant Singh's allegation that I have abdicated my own proper functions in dealing with this Bill ; that is what was described as "rubbish" by my friend, Mr. Mackeown.

Sardar Sant Singh : He might have acted purely as their mouth-piece, to use a mild language, but, for all I know, the successful prosecution of the war is primarily the subject of the Army Department. I can appreciate to some degree the hand of the Army Department in framing a Bill which is primarily intended or obviously intended for the successful prosecution of the war. He need not take any alarm at that. Therefore, when I say that, instead of offering congratulations to him, I can extend my sympathy to him, I should not be misunderstood for the use of that expression.

Sir, I moved on the first day of the opening of this Session an Adjournment Motion against the Government for not adopting the normal course of legislation by coming to the Legislature rather than to issue Ordinances. I was glad that in the course of a few days the Honourable the Leader of the House made a statement in which he said that the Government of India had decided to consult this Legislature in the matter of the Defence of India Bill. I understood then and I appreciated then the position of the Government of India that, after all, at this juncture and in this critical moment the Government of India had decided to show a change of heart which implied a trust in the judgment of the Legislature. The policy of trusting this Legislature in the most vital problems which the country is to face is always a wise one and I thought that this change of heart would lead them to a course of action which would create, which would cement the relationship between the Opposition and the executive Government of India. But soon we discovered that the

old habits of the executive had replaced the new idea. Soon we discovered that the Government of India sat tight upon the old traditions and would not profit by the emergency that was facing them. When our Party tabled a motion for reference of this Bill to a Select Committee, we decided to make that motion only if the Government agreed to that proposition, but, unfortunately, when on making an inquiry we found that the Government was opposed to it, we did not move the motion. It was happy that the European Group put their weight on the side of reference to a Select Committee and the Government modified their view and decided that the Bill should be referred to a Select Committee. In the Select Committee we showed all the sense of responsibility that the Opposition could show at a critical time. We cancelled all our engagements both private and public and agreed to consider the Bill in the Select Committee at very short notice. The next day the Select Committee met and, against probably the expectations of many, the Select Committee finished its labours in seven hours and the report of the Select Committee came in. But during the deliberations of the Select Committee we were soon disillusioned. There were occasions when the representatives of the Muslim League Party, the Congress Nationalist Party and Mr. Joshi...

Syed Ghulam Bhik Nairang : On a point of order, Sir, the Honourable Member has no business to refer to anything that happened in the Select Committee.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Chair does not think the Honourable Member should go into these things as to what happened in the Select Committee.

Sardar Sant Singh : I only wanted to say and I want to draw your attention to this fact that in my absence on the 15th, probably when the Select Committee report came under discussion in this House, a reference was made to my note of dissent in which I had said that some amendments were defeated by the casting vote of the Chairman and this statement of fact in my dissenting note was questioned by one Honourable Member. It is essential on my part that I should give a personal explanation on that point that my dissenting note with regard to the Select Committee was the correct one and I owe it to myself and to the House that I should make the position clear.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Honourable Member has already made a casual reference to it. The Chair does not think he should go into these details.

Sir Muhammad Yamin Khan : Nobody has challenged that.

Sardar Sant Singh : If it is not challenged, then I will leave the position as it was. Now, in the Select Committee certain changes were made, certain concessions were given, and some rules were modified. The report came to this House and then again those points which the popular representatives are expected to urge for the protection of the life, liberty and property of those who have sent them to this House were not properly responded to. The result is that we are asked to submit to the majority which is sitting behind the Government Benches. The Honourable the Leader of the House in his speech today has taken credit that the Government have shown a spirit of accommodation towards the Opposition Members in making certain concessions in the

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matter of the right of appeal. These are concessions no doubt, but we, who have had long experience at the bar, we who have seen political cases being tried before the courts, we who had seen this Defence of India Act of 1915 in actual working before the Martial Law days—my Honourable friend, the Leader of the House, has referred to the Martial Law Tribunal; I am talking of those tribunals which were set up before the Martial Law in 1914 and 1915—we rightly feel that the vast, the drastic powers which are being given to certain individuals, however highly placed they may be, become very dangerous indeed in their operation. Our friends of the European Group, naturally brought up in the traditions of England's judiciary, naturally getting their inspiration from English courts of justice, do not realize what handicaps there are in Indian courts of law. Their sojourn in India probably has never given them an experience of Indian courts in general.

I will, in this connection, briefly refer to the case of one of our colleagues, Bhai Parma Nand. He was tried before the Martial Law was declared by a Tribunal set up purely under the Defence of India Act. What was the result? The result was that he was sentenced to death on evidence which, in the opinion of the then Government of India, was not sufficient to convict anybody. The members of the then Executive Council, Sir Sankaran Nair and Sir Ali Imam, put up a fight against injustice done to Bhai Parma Nand and they said that the case as it was tried then should be re-tried because the trial was illegal. Correspondence went on with Sir Michael O'Dwyer, who insisted that the death sentence should continue. Ultimately, a compromise was reached commuting the death sentence to transportation for life, and Bhai Parma Nand is here today with us. He was sent to the Andamans and underwent a lot of suffering there. And the Honourable Members of this House will be interested to know who tried Bhai Parma Nand. The Tribunal consisted of those persons who were qualified to be the High Court Judges and Sessions Judges. There was no District Magistrate or Additional District Magistrate in that tribunal. If under such circumstances miscarriage of justice took place in 1914 or 1915 under the old Defence of India Act, is it surprising that we should demand guarantees from the Honourable the Leader of the House and the Government of India that the provisions of the present Bill will not be misapplied and the powers will not be abused? This is what we want. If we wanted to oppose these drastic powers and if we wanted that they should not be given to the Government, we would not have consented to the supersession of ordinary civil courts of the land. We should have opposed the Bill root and branch, but we did not do it. We know the emergency; we feel the critical time. At the same time, we want that there should be no abuse of the power.

When the Bill was introduced originally, I read some assurances given by Churchill to the House of Commons. I felt then that the Government of India will extend similar assurances to us. I expected that the Government of India, in view of the past experience and the working of the Defence of India Act of 1915, will assure us that certain instructions will be issued to the officers appointed to carry out these drastic powers and to the Provincial Governments how to use the powers. I expected some such thing, but the Honourable the Leader of the House only re-read the passage which I had read and said: "Is it not enough?" And here we have some of

the friends of the Muslim League Party who say that this should be considered enough. I still am not of that opinion. I still want to know from the Leader of the House whether it is not a fact that during the days when this Bill has been under discussion in this House and when the shortcomings and the possible abuses of the powers granted under the Bill have been brought to its notice, the Defence of India Ordinance has actually been taking the toll of people's liberty in several provinces ? There is no doubt about it. Every day the papers tell us that some action was taken here and some action was taken there. May I ask if the Government of India in their wisdom have taken any step by issuing any instructions to those who are responsible for the working of those Ordinances, so that it may be a sort of assurance to us that in future the working of this Act will not be abused ? We want this assurance. My friend from the Punjab, Maulana Zafar Ali Khan, told me that the days of Dyers and O'Dwyers and Johnsons are gone for ever, never to return. I wish I could share his optimism in this matter. Human mind, when it is intoxicated with the use of drastic powers, does not easily return to normal course of conduct. Man, in this respect, is like a tiger which once having tasted the blood of man becomes a man-eater. Similarly, we found that after the termination of the last war, soldiers that had come back from the theatre of war had become blood-suckers of the Indian nation. We saw that in the predecessor of this House that Rowlatt Act was passed in the teeth of popular opposition which led to the trouble which the Honourable the Leader of the House still persists in calling rebellion in the Punjab. We do not want to tie his hands in the matter of taking action in this emergency, but we certainly want that we should have on the floor of the House a clear indication that the Government of India will take suitable steps to prevent the abuse of this power. We do not want anything else.

Sir Homi Mody in his eloquent speech told us that the war can successfully be fought with the co-operation of the people. I quite endorse that view. But the co-operation of the people can only be obtained by trusting the people and by placing confidence in the people's judgment not by uni-operation but by co-operation, which signifies mutual good-will and mutual confidence. Is the Government of India prepared today in this emergency and in this hour of trial to offer that co-operation to the people of India when the people of India want to offer that co-operation to them ? Unless that trust and mutual confidence is accorded, I am afraid that the time will come and a stage will be reached in the course of this war, if it continues for a longer duration, when the Government of India will be compelled by the force of circumstances to come to the real leaders of the people for their help and guidance.

Captain Sardar Sir Sher Muhammad Khan (Nominated Non-Official) : Who are the real leaders ?

(Interruptions.)

Sardar Sant Singh : I am not ignorant of that fact and I know the resolution which the Working Committee of the Muslim League have passed, but I do not want to go into the details. They are matters of ordinary knowledge and can be read in the newspapers of the day. At the same time, I say, that if the real co-operation of the people is to be sought, India should be made to feel that it is a democratic country.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : Has not the Sikh community generally declared that it is generally in favour of the British Government and in support of their policy in the war ?

Sardar Sant Singh : I am sorry I am not inclined to reply to the question put by my Honourable friend.

Captain Sardar Sir Sher Muhammad Khan : You cannot.

Sardar Sant Singh : I know well the value of those hysteric declarations made in the Punjab. You know nothing of the real Sikh opinion. You are carried away by the statements published in the Press. The real Sikh opinion will be published soon. I am not entering into controversy on that point at all.

The Honourable Sir Muhammad Zafrullah Khan : All the time you are doing so.

Sardar Sant Singh : At this stage I do not want to enter into any controversial topic at all because the subject under discussion is too serious to be trifled with. What I submit is this ; if the Government of India want the co-operation of the real leaders of public opinion in the country, they must ascertain it.

Mr. F. E. James (Madras : European) : Who are they ?

Sardar Sant Singh : That question coming from the Leader of the European Group and an esteemed friend, I must answer. I did not care for my Honourable friends, Captain Sher Muhammad Khan and Co. But here is a responsible gentleman who is esteemed by all of us. He wants to know the real leader of the Sikhs. The Akali party represents the real Sikh opinion and Master Tara Singh is our real Leader.

Captain Sardar Sir Sher Muhammad Khan : Question.

Sardar Sant Singh : You may question ever so much from that distance. I will show you who has got the confidence of the country.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Honourable Member will proceed with his speech without minding these interruptions.

Sardar Sant Singh : I was saying, Sir, that the time will come, a stage will be reached when the Government will stand in need of co-operation of the people and that co-operation entirely depends upon the amount of confidence which the Government are able to infuse into the leaders of country. I, therefore, urge that the Government should utilise the time, should use their imagination and should not be carried away by simple slogans into the belief that without trust and mutual confidence of the men that matter that they can secure the co-operation of real India.

I am constrained to say that in the provisions of this Bill, admittedly most drastic powers have been entrusted to the Government, powers that extend to make laws, create new offences, powers that curtail the ordinary procedure of trial, superseding the ordinary courts of the land and even awarding summary punishments of very drastic nature. In such a case the responsibility of the executive government is greater in the matter of the

use of such powers. I wish, Sir, when the Honourable the Leader of the House gets up to give his reply that he would tell us the various steps which the Government of India propose to take in order to prevent the abuse of these powers. If those steps are effective, if in actual working we find that the present Defence of India Act has worked more satisfactorily than its predecessor, then none would be happier than myself. If the Government of India deserve any congratulation, that will be the time to offer the same. The time for offering congratulations to the Government will be the time when the Act ceases to operate and the experience of its working had been gained. At this stage it will be premature and unwise to say anything of the kind. At present we can only say to the Government, we have entrusted you with vast powers of sentencing people to death, to transportation for life, to various terms of imprisonment, power to enter other people's houses, to seize their property and to curtail their liberty and we await to see how you discharge this great trust. The time for right judgment will be at the end of the present emergency. We suspend our judgment of the Government till the time when the trust has been discharged. With these few observations I finish my speech.

Sir Muhammad Yamin Khan : Sir, I would not take up the attitude which my Honourable friend, Sardar Sant Singh, has taken in showing his sympathy to the Honourable the Law Member. I really congratulate the Honourable the Leader of the House whole-heartedly for the great sagacity which he has shown and the great spirit of accommodation which he has exhibited during the course of the discussion on this measure.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

My Honourable friend accused the Government right and left but he has not observed one glaring defect that underlies his assertions. He said that whenever people are clothed with power, they get intoxicated and they misuse that power, and they do not show justice. May I remind him that the Government had the full power to defeat all our motions, and yet they agreed to send this Bill to the Select Committee. That motion could have easily been defeated by Government with their votes, if their heads were swollen with power. If only the Government had refused to agree to the Select Committee motion, the Bill would not be in the present shape. The Government accommodated us and they showed a ready instinct to co-operate with us and they showed their willingness and anxiety to get the Bill improved on the lines most beneficial for the real objects for which the Bill has been introduced. Not only this, the Honourable the Leader of the House has shown a great spirit of accommodation whenever amendments were moved or suggestions were made on the floor of the House for improving the Bill. That does not show that power is intoxicating their heads. If that spirit is there in Government circles I am sure the Leader of the House will issue proper instructions to the different Governments not to out-Herod Herod in the matter of doing justice. I do not like my friend fear that the times of the Punjab Martial Law and of Dyer and O'Dwyer will recur. But I want Government to issue instructions that whenever a public leader is to be arrested they should not send a dozen machine guns to surround his house.

An Honourable Member : A real leader or an ordinary leader ?

Sir Muhammad Yamin Khan : I am talking of a real leader. To arrest him it is not necessary to create a fuss with machine guns.

My Honourable friend, Sir Homi Mody, said, and I entirely agree with him that at this time we have to put our house in order and the rules should be used for the benefit of India and Indians and Government should see that these rules are not used by any people for their own benefit only. I know there will be hard times and prices will go up and a lot of profiteering will be done by people in the name of industry. This exploitation of the public should be stopped under these rules. Then also labour should not be exploited and if prices go up and labourers cannot live on their present wages and there is a genuine demand for increase, these rules should not be used to crush them. My Honourable friend, Sir Homi Mody, in spite of being interested in industry will admit that such a course may have reactions later on and may ruin the industries.

My Honourable friend, Sardar Sant Singh, referred to action being taken in some Provinces against particular individuals. But I think the action taken in these cases may have been fully justified. From the day the war started lots of people have been creating all kinds of mischief. Some are selling articles at fabulous prices, some have been stirring the people, some have started political agitation even to the extent of running down other parties. All kinds of exploitation of the public have been going on and the action taken against them have been fully justified in many cases. One pathetic report that came to me was of a poor man who wanted an injection for his child but could not get it as a sum of Rs. 40 was demanded for it whereas it used to sell formerly for one or two rupees, with the result that the child died. If this kind of thing prevails, it must be stopped and there will be no one to sympathise with such people or refuse to arm Government with powers to deal with such situations. Of course, in one or two cases the man may not have got justice but those individual cases cannot form the basis of ignoring the whole machinery which gives protection to the public from unscrupulous people.

Sir, a great deal of improvement has been made in the Bill in the Select Committee as well as in the House. Not only has the right of appeal been allowed in cases of sentences of transportation or death but even in cases of shorter sentences provided the man is guilty of an offence which is punishable with death, transportation for life or imprisonment. And we have secured that the evidence will be written in full in cases where an appeal lies to the High Court. That is a great improvement. And though our views could be flouted by Government as we were in a minority, they have accommodated us and reason has prevailed. Therefore, though all the amendments moved have not been carried some very necessary ones have been carried. Sir, I support the passing of the Bill and I hope the rules will be worked by Government officials in such a spirit as to gain the confidence of the public and not give any cause for discontent ; and I hope the Judges who will administer the Act will take good care not to convict a man on flimsy evidence which may be rejected later on. Sir, I support the motion that the Bill be passed.

Mr. A. Aikman (Bengal : European) : Sir, in expressing my Group's support of the motion before the House I will be as brief as possible. I have no technical quarrel with this Bill as my Honourable friend, Sardar Sant Singh, seems

to have, and so I am able to congratulate the Honourable the Leader of the House on his labours in a whole-hearted manner. I am very glad that he agreed to accept the reference of the Bill to a Select Committee and I hope that that procedure has been justified in more ways than one. In spite of some very technical legal arguments which have been put forward by some of my Honourable friends in the Congress Nationalist Party, I do not think it can be said that the time that has been devoted to the consideration of this very important measure can be considered to be excessive. I do not propose to cover the ground that has already been covered by previous speakers, but I would like to support the plea made by my Honourable friend, Sir Homi Mody. Along with him, I trust that the powers which have been conferred on the Central Government and the Provincial Governments will be exercised by those officers who will have to administer the rules, with tact, with discretion and with common sense. Representing as we do on these Benches a considerable section of commercial and industrial interests, I would like to support his—Sir Homi Mody's—plea that when matters concerning industrial and commercial interests have to be considered, the commercial and industrial community will be consulted ; and I can assure the Government on behalf of those interests which we represent that if they will do so they will get such close co-operation that any idea of compulsion will not need to be considered.

Mr. M. S. Aney : Sir, the motion before the House is certainly a formal one because all the clauses have been already considered in detail and it comes in as a consequence of the deliberations and decisions we have had for the last few days in the House. I am not, however, in a position to support the motion. That does not mean that I am slow in appreciating the spirit of accommodation and of reasonableness shown by the Honourable the Leader of the House in meeting us on some of the most vital points. If I am not in a position to support the motion, it does not mean that I have got anything to say against his attitude in the House. On the other hand, in spite of frequent passages at arms between him and some of my friends sitting behind me, who had to carry on the fight singlehanded on behalf of the people of India, I found on the whole a spirit of sportsmanship on his side, for which I have no hesitation to offer him my whole-hearted congratulations. A Bill like this is always difficult for any Member to pilot because it is not a Bill in which anything is to be offered to the people. It is a Bill intended to take away some of the precious rights from the people. That is always a difficult task, and, therefore, in doing that task considerable tact has to be shown, and I have no hesitation in saying that the Honourable the Leader of the House has given us an example which we cannot easily forget. But if in spite of that, I am opposing this motion it is for other reasons and not for any reason that has got anything to do with the Honourable the Leader of the House. There are matters of principle, and on principles I do not like to make any compromise. That is not in my nature. I am not one of those who do not realise the necessities of an emergent situation. I know emergent situations require emergent measures also,—measures which are of an abnormal nature. I perfectly realise that. But if I find and if I am convinced that any particular measure which is brought before the House as an emergent one is not merely intended to meet the requirements of that emergent situation but

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goes far beyond it, if I feel like that, I think I shall be shirking my duty in giving my consent to a measure of that kind. In this measure I very strongly feel like this. This is not the first occasion that we are faced with a situation like that. There has been a Defence of India Act in operation in India for some time when the great European War was being fought between 1914 and 1919. The experience of the working of the Defence of India Act was there. I thought that the Government of India of today would carefully take stock of all the experience they had of the working of that Act which was then in force, and come forward now with a measure which would, at least, be shorn of some of the outstanding defects of that Act. If it was the experience of the people of this country that that Act was harshly worked, it was the duty of the Government of India to have carefully examined all the provisions of that Act and seen which provisions were found to have been of unreasonable harshness and which were essentially necessary for the due discharge of their duties. I am afraid if we compare this measure—of course I concede that there have been some improvements made here on the floor of this House and in the Select Committee—and the Defence of India Act as it then existed, then we shall find that no thought is given and no application is made whatsoever to study the question from that point of view by the Government. On the other hand, the present Bill is an improved edition of that Act. In some respects it seeks to arm the executive officers with more drastic powers than the old Defence of India Act, as if the working of that Act was very satisfactory and had left no grievances whatever with the people of India. When a measure like this is introduced in its present form in this House, it means that the old experience was not at all availed of. On the other hand, it means that the Government felt that the working of the old Act against which there was so much complaint in this land had given no real ground whatsoever for complaint. Unless we put that interpretation, I cannot understand the Government of India introducing now a measure like this in this House. That is the first thing I want to say against this measure. It has got nothing to do with the attitude of the Honourable the Leader of the House at all.

It seems somebody else in the Government of India prepares the Bills : the thing is really made there and the responsibility lies upon the Government Member to pilot the Bill in the House. In the exercise of that responsibility he has tried to show as much accommodation as he possibly can, but the fact seems to be that there were some people who are perfectly callous to the feelings of the people when such repressive laws are in operation and who, therefore, refuse to take any note of previous experience and want again to claim and insist on having the same powers, which they, I venture to say, have grossly abused before.

Then, Sir, the second point which I wish to deal with and which, in my opinion, is in the nature of a principle, is this. This is a law which the Central Government is enacting here today. It will be admitted on all hands that this Act trenches upon a number of items which in ordinary times would have been within the exclusive jurisdiction of the Provincial Governments. The Central Government is today making certain provisions here which entrench upon subjects which are exclusively within the jurisdiction of the Provincial Governments. I know they

have now the legal right to do it ; I don't deny it. But my point is this. If these measures are taken with a view to the successful prosecution of the war, then the point which the Government of India have to consider first is this. Before making any law which is likely to entrench upon the jurisdiction of Provincial Governments, they should have taken good care to consult the Provincial Governments themselves. There was nothing in law to prevent them from doing it. But they did not do it. They know that if this Act is to be put into operation, most of the provisions of this measure will have to be given effect to by the Provincial Governments. Their willing co-operation is essential ; and when the Government of India knew that there were Provincial Governments and Provincial Ministries formed in this country on certain definite understanding with the Government of India, it was very necessary for the Central Government to see that those Provincial Ministries and Provincial Governments were first informally consulted and their opinions ascertained before introducing a measure of this character in this House. What is the position today ? The position is this. A fact is accomplished here, and the Provincial Ministers have either to carry out the provisions of this measure or express their.....

The Honourable Sir Muhammad Zafrullah Khan : Why is the Honourable Member presuming that they were not consulted ?

Mr. M. S. Aney : If they had been consulted, I shall be very glad to withdraw all my observations which I have made, but I want to know whether before introducing this measure, the Provincial Governments and the Ministries of the eleven Provinces were consulted and whether they gave their consent to all the provisions of this measure ? I am ready to pause for a reply from the Honourable the Leader of the House. If the Honourable Member will give me a definite reply, then I am prepared to withdraw all the observations I have so far made on this subject.

The Honourable Sir Muhammad Zafrullah Khan : I said that the Honourable Member was not correct in assuming that the Provincial Governments had not been consulted.

Mr. M. S. Aney : Sir, I am unable to understand this rather enigmatical reply.....

The Honourable Sir Muhammad Zafrullah Khan : It is plain English.

Mr. M. S. Aney : Sir, as long as the Honourable Member is not giving me a categorical reply that the Provincial Ministers gave their assent to the measure before the House, I have every right to assume that the interpretation I am putting is the correct one, and I think I am justified in assuming it. However, that is another point.

But, Sir, we are enacting a law here because of the war emergency, and I may assure the Honourable Member,—I think I need not assure him because he knows it perfectly well, that wars are not fought merely by enacting a number of laws in this House. Wars are fought by the willing co-operation of the people for whom these laws are supposed to be made. Therefore, every attempt should have been made from the very beginning to enlist the co-operation of the people through their representatives in the autonomous governments of the provinces before introducing a measure of this character.

[Mr. M. S. Aney.]

Then, Sir, the third thing to which I take strong objection in this Bill is this. We are passing a measure here, and it will soon become a law. Whenever we make a law it is assumed that we have considered all the aspects of the measure, and placed a complete and self-sufficient law on the Statute-book. But what exactly is the nature of the law that we are now making? The law we are making here is this—we are asking somebody, we are delegating drastic powers to somebody, to make such rules as he likes to meet the requirements of any dangerous situation, should it arise. We have jotted down a number of points—I believe they come to about 35 or 36 points,—and we have legislated in such a manner that these rules are to be framed by somebody without prejudice to the rights of the Central Governments to make rules themselves. Who that somebody may be, we do not know; who that somebody will be, it is impossible for us to make out here. It is a delegation of power of a very considerable and indefinite nature. What rules they will make we do not know. We only indicate the points on which the rules are to be made. It is those rules which will be administered as laws. What kind of laws will be made under these rules, we do not know, and we must assume that somebody else will be a very wise man, with all the prudence, with all the statesmanship that are expected of him, to make a wise law. We have to assume all that before we can agree to a law of this nature. Sir, a delegation of this kind is a very dangerous thing. It practically amounts to an abdication of our right in favour of someone. It is the third objectionable thing which underlies this Bill to which I cannot subscribe. Sir, it really pains me to say something against a measure for which the Honourable the Leader of the House has taken so much trouble to pilot, but when I find that important principles are involved, when I find that very vital and fundamental principles of jurisprudence are being departed from, it becomes necessary for me to assert the view of the people and tell the House clearly that with all my heart to co-operate with my friend the Honourable the Leader of the House, I am unable to give my consent to a measure of this kind, because it involves principles of a very drastic and retrograde character. I shall not go into the details, because once I start doing it I am afraid I shall have to repeat some of the arguments already advanced on the floor of the House.

Then, Sir, the last point which I wish to make is this. An appeal has been made to the Honourable the Leader of the House from all sides of the House, and I do not propose to sit down without also making an appeal myself to him. No Honourable Member who has been enthusiastic in his support of this measure and also of the part which the Honourable the Leader of the House has played in piloting this measure has failed to strike one note at the end of his speech, and what was that note? He expected that, after all, this measure would be justly and fairly used and the powers given would not be abused. There was that nervousness and suspicion in the mind of every one of those who have accorded their support to this measure. After all that has been done by the Honourable Member in charge, he has not done enough to remove that suspicion from the mind of any of the Honourable Members in this House who have accorded their support to it. Why does that suspicion exist? Why does my friend, Sir Homi Mody, feel and say that com-

mercial interests should be properly looked after and the drastic powers should be justly used ? Why is it necessary for my friend, Mr. Aikman, to also think and plead in a similar manner ? Why is it necessary even for my friend, Sir Muhammad Yamin Khan and also for my friend, Syed Ghulam Bhik Nairang, to entertain certain fears and to make an earnest appeal like that to the Honourable Member in charge ? Because we all know that it is not the Leader of the House, it is not the Honourable gentlemen sitting behind him, who will administer this law, but it will be somebody else who is not present in this House who will administer it, it will be somebody else who do not know and may not care to ascertain the spirit or the intensity of feeling of the public as regards this measure, it will be somebody else who will be carried away simply by what they regard as the exigencies of the war, who will have to administer it. If the administration of this law is going to be left to the hands of those persons, is it not natural that we should feel a good deal of apprehension in this matter ? Therefore, Sir, now that my friend has succeeded in getting the support of this House, excluding the Members of the Congress Nationalist Party, to this measure, it imposes on him a greater responsibility, because it is to him that they are looking up for all the good that is to come out of it. In my opinion there will be little good emerging out of this measure, but there is the assurance of my Honourable friend and, therefore, a greater responsibility is thrown on him and on those who will be invested with the rule-making power under the Act. The rules will really complete and constitute the effective law which we are enacting now ; and the framing of the rules will have to be left, therefore, to persons above suspicion. Persons whose patriotism and whose regard for the feelings and requirements of the people will be above reproach. He will have to make a good choice of those persons to whom the powers have to be delegated. It is a great responsibility and I do not know how far he will be able to get the co-operation of the other authorities in whose interests and at whose instance he is making the law today, at the time when he will have to make a choice of the persons for the purpose of exercising these powers. His difficulties are not over today. His difficulties will begin after this Act is passed and when the question of delegation of powers will have to be solved by him. Therein lies his difficulty, and then probably he will think that some of the observations that we have made here today had some foundation. I do not want to take more time of the House. I am really sorry that I am not in the happy position of supporting the third reading of the Bill, but at the same time I again repeat that I am not slow in appreciating the spirit of accommodation shown by the Leader of the House. With these remarks I oppose this motion on my behalf and that of the Party I have the privilege to lead.

Maulana Zafar Ali Khan (East Central Punjab : Muhammadan) : I believe that the vast powers that have been granted to the Executive under this Bill will not be abused by the Government, because I think that the Government are not a set of fools as Sardar Sant Singh and Mr. Aney seem to have thought.

Mr. M. S. Aney : I am glad for the conversion of my Honourable friend.

Maulana Zafar Ali Khan : I am not a prophet, but speaking on the floor of the House a few days back, I predicted that Russia might take

[Maulana Zafar Ali Khan.]

another somersault and join Germany and then war might come to our very doors when Simla might conceivably be bombed. Sardar Sant Singh, my dear old and Honourable friend, Sardar Sant Singh, is obsessed with a very desperate fear that perhaps the days of Johnsons and Dyers are not gone for ever. He seems to live constantly on a battlefield where "Dyer to the left of him, Dyer to the right of him, Dyer in front of him, volleyed and thundered". But I assure him again that the Dyers are gone, O'Dwyers and Johnsons have gone never to come back. Why does he then want an assurance from Sir Muhammad Zafrullah Khan? Sir Muhammad Zafrullah Khan, poor fellow, according to Sardar Sant Singh, has abdicated in favour of Mr. Ogilvie. According to him and according to Mr. Aney, this Defence of India Bill was drafted by Mr. Ogilvie and piloted by Sir Muhammad Zafrullah Khan. I do not believe that. Everybody knows that since 1914, up to the year 1939, much water has run below the bridges. India today is not the same India that it used to be. The India of the days when Sardar Sant Singh was pilloried, the India of the days when Sardar Sant Singh was dragged to the jail, the India of the days when he was given bread mixed with sand—all that has gone for ever. A great change has come over India.

An Honourable Member : What was your own experience?

Maulana Zafar Ali Khan : Of course, I suffered. But my bitter experience tells me that Government dare not repeat the same experience now. (Interruption.) A great change has come, and if you say that the Government have not taken the country into their confidence when drafting this Bill, I say that they did take the country into their confidence when they called upon you and upon the other Members of the House to attend and give them advice. Why are those Benches—(pointing to Congress Party Benches)—empty? I wish that our Congress friends had been here, so that they might have joined Mr. Aney in their protest against the evil of the measure which he so much denounces. They are not here, it is their fault, not the fault of the Government.

Mr. M. S. Aney : I have said nothing about them.

Maulana Zafar Ali Khan : And when I said that Government are not fools, I had reason for saying so. In the year 1914, when the Great War came, England had America on her side, had France on her side, had Italy on her side, had Japan on her side, and her position was very strong. But now England is in a very desperate fix. Till a few days ago when this Bill first came to this House, Germany alone was fighting England. Russia was an unknown quantity, Japan was an unknown quantity, Italy was an unknown quantity, and many others were unknown quantities. But what is the position now? The position is very different. England may not require our help just now, but in another three or four or six months a time will come when the mainstay of British defence shall be India and then we shall be required to give help with men and money. Do you think that Englishmen are such blithering idiots that they will alienate the sympathy of India, that they will cut the throat of those who feed them? I do not believe that. If you believe that, then, of course, you can believe whatever you like in respect of this Bill. It is open to you to assert that this Bill is introduced with the main object of throttling the people of India, that this Bill is going

to be passed with the main object of getting an opportunity of seizing anybody who commits the slightest offence and then hanging him or transporting him. I do not think the Government are such fools. I do not imitate the example of my Honourable friend, Sardar Sant Singh, in refusing some measure of congratulation to the Honourable the Law Member for the pains that he has taken in piloting this difficult Bill.

Sardar Sant Singh : I only suspend my judgment.

Maulana Zafar Ali Khan : He has shown a spirit of accommodation, a rare spirit of accommodation under such difficult circumstances. Therefore, I compliment him on it, and I think that a measure of such a character as this should be passed in the hope that it will not be abused. I believe that it will not be abused. I have reasons for that belief, but because Sardar Sant Singh would not believe, Mr. Aney would not believe, in order to reassure those two worthies, I think the Honourable the Leader of the House should tell them that it will not be abused. I lend my support to the Bill.

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) : Sir, this is a very drastic measure, it gives a blank cheque not only to the Government of India, but also to the Provincial Governments and officers under them. The way in which evidence shall be recorded and the composition of the special tribunals are not to our full satisfaction. We tried our level best to improve the Bill, but as we are here, we have found ourselves unable to carry what we wanted. However, Sir, my learned friend, Sardar Sant Singh, is afraid of one Provincial Government, but I am afraid of nine Provincial Governments. We know that the burnt child dreads the fire. The conditions which prevail in nine provinces are very miserable, and we have suffered much and we are very much terrified by this blank cheque given to those at whose hands we have suffered in our honour, property and life. I will only appeal to the Leader of the House to see that such wide powers given by the Government of India are not abused. There is every danger of their being misused and the apprehensions of my learned friends of the Nationalist Party are well founded. When the rules are made, I think almost all the rules should be made by the Government of India, and the rule-making power which has been given to the Provincial Governments should be curtailed as much as possible, so that the danger may be avoided. The measure contains a provision for the prohibition of meetings and processions, but a rule has been made that meetings and processions held for the removal or for the redress of communal grievances will be exempt, but I know that the rule has not got the same force as law. However, I hope that the rules will not be changed in quick succession and prove dangerous in the matter of restricting the activities of the Muslim League which is fighting to safeguard the interests of the Mussalmans of India. With these words, I resume my seat.

The Honourable Sir Muhammad Zafrullah Khan : Sir, in a way I am glad that the Honourable the Leader of the Nationalist Party exhibited so much anxiety on the score of consultation with Provincial Governments. He seemed to think that that would have provided a safeguard. If that is so, then there is a much bigger safeguard inherent in the provisions of this Bill. The administration of this Bill, after it has become law, will almost entirely be in the hands of Provincial Gov-

[Sir Muhammad Zafrullah Khan.]

ernments and, therefore, I hope that will be some consolation to Mr. Aney with regard to the anxieties to which he has given expression. I am aware that for some time during the debates on this Bill Mr. Aney has had to absent himself in connection with perhaps more important duties but I have no doubt that when he studies the provisions of this Bill at leisure, he will find that on the side of actual administration the Central Government will have very little to do. I can assure him that in any action that the Central Government may take under this Bill it will be guided by tact, discretion and circumspection. Those were I think the expressions used in admonishing the Central Government with regard to the exercise of their powers under this Bill. Sir, I was very sorry to notice that one Honourable Member made it his duty on every occasion in season and out of season to attack the honesty, the integrity and the intelligence of the judiciary of this country.

An Honourable Member : Not the entire judiciary.

The Honourable Sir Muhammad Zafrullah Khan : I did not notice any exceptions made in that respect, from third class magistrates up to High Court Judges, nobody was spared. Sir, I protest most emphatically against the aspersions cast by that Honourable Member on the judiciary. As he himself said, it is not enough that justice should be done ; it is also necessary that the public should have confidence in the judiciary. I agree with him entirely, but may I add that I can think of no worse method of destroying the confidence of the public in the administration of justice than the kind of wholesale and sweeping attack for which that Honourable Member has made himself responsible against members of the judiciary in this country.....

Sardar Sant Singh : Let us agree to differ on that point.

The Honourable Sir Muhammad Zafrullah Khan : and that kind of attack is the more to be regretted because advantage has been taken of the privileges of the Members of this House to launch that attack with impunity and in a manner which is calculated to give it the widest publicity. The judiciary of this country have to discharge heavy and responsible duties and on the whole they discharge them most creditably. I must also protest against the allegation made by the same Honourable Member who professed sympathy with my position *vis-a-vis* this Bill—that I was acting under the directions of somebody else in piloting this Bill through the House. May I assure him that as Member in charge of this Bill I have exercised my discretion wherever I have been convinced that the exercise of that discretion was called for.

Sir, it only remains for me to give expression to my deep sense of indebtedness to the House for the very valuable co-operation that it has given me in piloting this measure through the House within a space of time which proves that the House fully shared with me the responsibility in respect of this measure and the anxiety to save the time of the House as much as possible at a time when we are faced with the grave crisis of war. May I also express my gratitude to all Honourable Members who have spoken, including Sardar Sant Singh, on this motion for the manner in which they have been pleased to express their appreciation of my humble efforts to meet their views on certain aspects of the Bill.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That the Bill, as amended, be passed.”

The motion was adopted.

THE INDIAN AIRCRAFT (AMENDMENT) BILL.

The Honourable Sir Andrew Clow (Member for Railways and Communications) : Sir, I move :

“ That the Bill further to amend the Indian Aircraft Act, 1934, for certain purposes, be taken into consideration.”

This is a Bill making amendments of a comparatively minor character in the Indian Aircraft Act and I have set out the reasons in some detail in the Statement of Objects and Reasons. The second and the last clauses enlarge somewhat the scope of the Act with a view to enabling us to fulfil certain international obligations. The third clause makes a very minor amendment in the provisions regarding exemptions. As the Act at present stands, exemptions are expected to be given both from the Act and from the rules by notification. Normally, it is more convenient to give exemptions from rules by a provision in the rules themselves and the reference here to the rules is unnecessary and a little embarrassing. Perhaps the clause of most immediate practical importance is clause 4, which is designed to increase the safety of aircraft by ensuring proper provision for lights in dangerous places. As the House will observe from the wording of the clause, we contemplate that, where private persons are put to financial loss as a result of this provision, they should receive compensation.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That the Bill further to amend the Indian Aircraft Act, 1934, for certain purposes, be taken into consideration.”

The motion was adopted.

Clauses 2, 3, 4 and 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Andrew Clow : Sir, I move :

“ That the Bill be passed.”

and I would thank the House for the unanimity they have displayed.

Mr. President (The Honourable Sir Abdur Rahim) : The question is

“ That the Bill be passed.”

The motion was adopted.

THE PANTH PIPLODA COURTS (AMENDMENT) BILL.

The Honourable Mr. J. A. Thorne (Home Member) : Sir, I beg to move :

“ That the Bill to amend the Panth Piploda Courts Regulation, 1931, for a certain purpose, be taken into consideration.”

[Mr. J. A. Thorne.]

Sir, I have been asked what, and where, is Panth Piploda. I have some sympathy with that ignorance, because I myself shared it until my departmental concern with this area required me to identify it on the map. I can, I think, satisfy the curiosity of the House in a few words. The Chief Commissioner's Province of Panth Piploda consists of ten villages, with an area of about 25 square miles and a population of about 4,500 people; and is an island, or more correctly an archipelago, of British India, interspersed between Indian States and, I believe, wholly surrounded by them, in Central India. It is, as I said, a Chief Commissioner's Province. It is one of the six Chief Commissioners' Provinces referred to in section 94 of the Government of India Act, 1935. The Chief Commissioner is the Resident of the Central Indian States; and the highest criminal court of the Province is composed of the Chief Commissioner and an Additional Judge, who is I think normally a District and Sessions Judge of the Central Provinces and Berar.

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhammadan Rural) : What is the revenue of this Province ?

The Honourable Mr. J. A. Thorne : I think I can answer even that question,—it is about half a lakh. Now, Sir, there is no machinery, we have discovered, for composing a difference of opinion, if it should occur, between the Chief Commissioner and his colleague when sitting together on this criminal court, which is the "High Court" for the Province; and the sole purpose of this Bill is to provide an arrangement by which, if that unfortunate contingency should arise, it can be resolved. The occasions on which it may arise are, first, that it is the duty of that court to confirm a death sentence passed by the Sessions Judge, secondly, that a case may go to it on appeal, and thirdly, that a case may be taken on revision; and the terms of this Bill cover all those contingencies. I owe the House, I feel, an apology for inflicting a measure of this kind on it. There is no practical necessity; I believe that in the last five years there has been only one murder case in this area, and on that occasion there was no difference of opinion among the judges who had to deal with it. But the constitution lacks any machinery by which a measure of this kind can be put through without its being brought before the Central Legislature. I think we shall find, with more experience, not only in respect of this Chief Commissioner's Province but in respect of some others, that that is a position with which we cannot easily be content; and the necessity may some day arise for power to be given by which the Governor General in Council may, by regulation or notification, perform quite necessary, but quite unimportant, functions, similar to that which this Bill is designed to perform. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That the Bill to amend the Panth Piploda Courts Regulation, 1931, for a certain purpose, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. J. A. Thorne : Sir, I can only echo the words to which Sir Andrew Clow has just given expression and thank the House for the singular unanimity with which this matter has been expedited. Sir, I move :

“ That the Bill be passed.”

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

“ That the Bill be passed.”

Mr. M. S. Aney (Berar : Non-Muhammadan) : May I say one word, Sir ? It is a very interesting motion which is now before the House, but my curiosity was aroused on two points. In the first place, why is it that since 1935 this little Panth Piploda has emerged into a separate province ? Before 1935 we did not hear of this place at all and we knew nothing about it. That is one point of information. The second point of information is that it has, after all, its jurisdiction over 25 square miles and there are two Judges already working as the High Court of that place. Where is the necessity to have a third Judge for which we are going to make a provision here by passing this Bill ? Is the judicial work of that court—I do not know whether that judicial court has got original power—so much that the need of a third Judge is felt very keenly ?

The Honourable Mr. J. A. Thorne : Sir, my Honourable friend is apparently under the impression that this area became a Chief Commissioner's Province for the first time under the Government of India Act, 1935. That is not correct. It was constituted as a Chief Commissioner's Province as long ago as 1928. But from that date until the 1st of April, 1937, it remained in a decent obscurity as being under the administration of the Political Department. It emerged into the full light of day in the guise of a Chief Commissioner's Province from the 1st April, 1937, when it came under the charge of the Home Department of the Government of India. My Honourable friend then said, if I understood him aright, what is the need for a third Judge for this very small area ? Well, Sir, my own feeling is that from the practical point of view there is, and is likely to be, no need for a third Judge. If there is any impression that an officer is hereby to be appointed to sit in this area, or anywhere near it, waiting patiently for cases to come to him and with no other duties, that impression is entirely incorrect. I am right in saying that even the Additional Judge, who is now the second member of this Tribunal, is not occupied for any great part of his time with the mere work of Panth Piploda ; and certainly this third Judge, who, I may perhaps inform the House, will probably be the Judicial Commissioner who does now the work both of the Western India States and of Rajputana, will be appointed *ad hoc*, not as a continuous measure but when occasion arises through a difference of opinion through the two Judges of the Tribunal. He will in that case be appointed *ad hoc* to resolve that difference of opinion. I hope that I have met my Honourable friend's difficulties and that he will have no hesitation now in allowing this measure to pass.

Mr. President (The Honourable Sir Abdur Rahim) : The question

“ That the Bill be passed.”

The motion was adopted.

RESOLUTION RE AMENDMENT OF THE RESOLUTION ON ROAD DEVELOPMENT.

The Honourable Sir Andrew Clow (Member for Railways and Communications) : Sir, I move :

“ That this Assembly recommends to the Governor General in Council that the Resolution on road development adopted by the Legislative Assembly on the 10th February and by the Council of State on the 5th March, 1937, be amended as follows :

‘ That for the words ‘ for purposes of civil ’ in sub-paragraph (1) of paragraph 2, and for the words ‘ for the purposes of civil ’ where they occur in two places in sub-paragraph (1) of paragraph 3, the word ‘ in ’ be substituted in each place ’.”

Sir, the position, when the Road Resolution was passed, was that petrol used for purposes of military aviation was exempt from duty. It has since been subjected to the ordinary duty, and the percentage of that duty, which at present goes to the Road Fund, will consequently accrue in respect of such petrol to that Fund. But there is no provision in the Resolution for the expenditure of any money so accruing. The only object of these amendments is to provide for that omission. The intention is that the money should be used, whether it comes from civil or from military aviation, in the form of grants of aid in aid of civil aviation.

Mr. President (The Honourable Sir Abdur Rahim) : Resolution moved :

“ That this Assembly recommends to the Governor General in Council that the Resolution on road development adopted by the Legislative Assembly on the 10th February and by the Council of State on the 5th March, 1937, be amended as follows :

‘ That for the words ‘ for purposes of civil ’ in sub-paragraph (1) of paragraph 2, and for the words ‘ for the purposes of civil ’ where they occur in two places in sub-paragraph (1) of paragraph 3, the word ‘ in ’ be substituted in each place ’.”

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhammadan Rural) : May I ask the Honourable Member, what is the amount involved ?

The Honourable Sir Andrew Clow : I am afraid, Sir, in the present circumstances it is almost impossible for me to say what the amount will be. It is 2½ annas per gallon on the petrol used but with the developments with which we are now confronted, it would be very hazardous to make a prediction at all. I will, however, lay on the table of the House, at intervals, a statement showing exactly how this money spent in aid of aviation is expended so that the House will be able to see the amounts involved from time to time.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That this Assembly recommends to the Governor General in Council that the Resolution on road development adopted by the Legislative Assembly on the 10th February and by the Council of State on the 5th March, 1937, be amended as follows :

‘ That for the words ‘ for purposes of civil ’ in sub-paragraph (1) of paragraph 2, and for the words ‘ for the purposes of civil ’ where they occur in two places in sub-paragraph (1) of paragraph 3, the word ‘ in ’ be substituted in each place ’.”

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 21st September, 1939.