

Wednesday, 24th February, 1943

COUNCIL OF STATE DEBATES

(OFFICIAL REPORT)

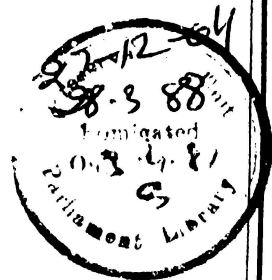
VOLUME I, 1943

(15th February to 3rd April, 1943)

THIRTEENTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1943



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COUNCIL OF STATE

Wednesday, 24th February, 1943.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the Chairman (Sir David Devadoss) in the Chair.

MEMBER SWORN :

The Honourable Sir Satyendra Nath Roy (War Transport Secretary).

QUESTIONS AND ANSWERS.

DISCRIMINATORY LEGISLATION IN CEYLON.

58. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (a) Will Government state whether discrimination against Indians still continues in Ceylon?

(b) Is it a fact that deportation of Indian labourers from Ceylon in 1939, and introducing discriminatory definitions of "Ceylonese" in the Land Development, Fisheries and Bus Licence Ordinances, and in many administrative regulations, have adversely affected the civic rights of the Indians in Ceylon?

(c) What steps have Government taken or propose to take in this matter?

THE HONOURABLE MR. G. S. BOZMAN: (a), (b) and (c). The Honourable Member's question is somewhat difficult to answer as it stands. There are measure on the Statute-book in Ceylon to which the Government of India have taken and still take objection. Certain administrative instructions also appear to the Government of India to deprive Indians in Ceylon of that equality of opportunity to which the Government of India consider them to be entitled. Whether the measures to which the Honourable Member refers have adversely affected the civic rights of Indians in Ceylon must be a matter of opinion in each case, but I should point out that it is not correct to say that labourers were deported in 1939. The Government of India have made suitable representations in all cases where they seemed to be required and are continually watching the interests of Indians.

REQUEST FOR ADDITIONAL LABOUR FROM CEYLON.

59. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Is it a fact that at the instance of the Planters' Association of Ceylon, the Ceylon Government have made a request to the Government of India for a further supply of immigrant labour from India? If so, what steps have Government taken or propose to take to ensure the civil, economic and political rights of the Indian immigrants, and to wipe out racial discrimination against the Indians in Ceylon, before re-opening immigration?

THE HONOURABLE MR. G. S. BOZMAN: The Honourable Member's attention is invited to the papers regarding Ceylon Government's request for additional labour which were placed on the table of the House on Monday, the 22nd February, 1943.

COUNTRY CRAFT CAPACITY ON THE WEST COAST.

60. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Will Government state what arrangements, if any, have been made to utilise to the fullest capacity the sea-going country craft available on the west coast of India, between Karachi and Cochin, estimated by the Sorley Committee at 400,000 tons during the rainy season; and thereby divert traffic to country craft?

THE HONOURABLE SIR SATYENDRA NATH ROY: The organisation set up to make the fullest use of country craft capacity on the west coast is described in the Press Note issued on the 8th January, 1943, of which I lay a copy on the table. Since the Note was issued, whole-time Intelligence Officers have been appointed at Bombay, Karachi and Calicut. At other ports on the west coast, including State ports, Customs Officers are now performing the duties of Intelligence Officers. Maritime provinces on the west coast have been requested to give full publicity to the organisation and to make the fullest use of available country craft. Departments of the Government of India concerned, in particular War and Supply Departments, have also been asked to divert to country craft all stores suitable for such transport. Steps for the diversion of traffic from railways to country craft are being taken in suitable cases.

*Press Note.***IMPLEMENTING SORLEY COMMITTEE RECOMMENDATIONS COUNTRY CRAFT ORGANISATION SET UP.**

With a view to utilising all the spare capacity of sea-going country craft available on the West Coast of India between Karachi and Cochin, estimated by the Sorley Committee at 400,000 tons during the dry season, the Government of India are setting up an Intelligence Organisation, in accordance with the recommendations of that Committee.

The organisation will consist of a Country Craft Organisation Officer, with headquarters at Bombay, three whole-time Intelligence Officers to be stationed at Bombay, Karachi and Calicut and Intelligence Officers at all Customs Ports between Karachi and Cochin. Rao Bahadur Maneklal Lallubhai has already been appointed Country Craft Organisation Officer and an Intelligence Officer for Bombay has been selected.

The Country Craft Organisation Officer will maintain the closest liaison with the Regional Controllers of Railway Priorities at Bombay and Madras to see what commodities can usefully be diverted from rail to sea. In consultation with the Major Ports and Customs authorities, he will endeavour to improve the facilities available to country craft, so that delays may be avoided and a quicker turn round ensured. He will also maintain close contact with officers of the Quarter Master General's Branch, the Army Commands and the Supply Department in respect of the commodities which they may wish to transport by country craft.

The Country Craft Organisation Officer will be responsible for maintaining a register of brokers of substance, on a voluntary basis, and will also arrange for the booking of commodities through such brokers as will accept responsibility for security of delivery at pre-arranged rates.

The Government of India attach the greatest importance to the success of the efforts now being made to divert traffic to country craft which the Railways are unable, owing to the demand made on them, to carry expeditiously. They desire all authorities responsible for or concerned with the movement of stores and supplies to consider in suitable cases whether diversion of transport to country craft is not feasible and to consult freely the Country Craft Organisation Officer, Phoenix Buildings, Ballard Estate, Bombay or the Intelligence Officer concerned about the possibility of obtaining transport by country craft to meet their requirements.

WAR TRANSPORT DEPARTMENT,

NEW DELHI;

January 8, 1943.

**ALLEGATIONS MADE AGAINST THE MILITARY AUTHORITIES BY THE CALCUTTA
DIOCESAN RECORD.**

61. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (a) Has the attention of Government been drawn to the editorial article in the January number of the *Modern Review* published in the *Hindustan Times*, dated the 11th January, 1943 (page 8) in which it is stated that respectable residents of a large number of houses in certain areas in Calcutta are being turned out of their houses as "their homes are required for brothels for the military"?

(b) Are Government aware that the Calcutta Diocesan Magazine and the *Guardian*, the well-known Christian Weekly of Madras, have also protested strongly against this disgraceful conduct?

(c) Will Government name the military units for whom the brothels are intended; and do Government propose to take immediate steps to disallow such reprehensible acts on the part of the military?

GENERAL THE HONOURABLE SIR ALAN HARTLEY: (a) and (b). The statements upon which the comments in the *Hindustan Times* and the *Guardian* are based were contained in an article in the November issue of the *Calcutta Diocesan Record*. The facts are not, however, as stated in the article. The Government of India are informed by the Provincial Government that with the arrival of large numbers of troops, brothels sprang up in various localities in Calcutta; that numbers of these were at once closed down but some, started in the vicinity of existing brothels, were allowed for a time to remain; but that there was no question of turning residents out of their houses to make way for such establishments nor was any action with that object taken; that on receipt of various complaints including complaints from the Metropolitan of India these were also closed down and that no brothels for the troops have been provided by the authorities.

The allegations made against the military authorities by the *Calcutta Diocesan Record* were substantially withdrawn in a subsequent issue.

Part (c) of the question does not arise.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Did the occupiers or owners of the houses referred to in the question receive notices from the authorities concerned, whether civil or military, asking them to vacate the houses, even though in the end the houses may not have been vacated?

GENERAL THE HONOURABLE SIR ALAN HARTLEY : No, Sir; according to the information which we have received from the Bengal Government, that was not so.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Has the attention of Government been drawn to the communication sent to the Press by the Metropolitan ?

GENERAL THE HONOURABLE SIR ALAN HARTLEY : Yes, Sir. That has been referred again to the Bengal Government.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Has any reply been received from the Government of Bengal ?

GENERAL THE HONOURABLE SIR ALAN HARTLEY : Not yet.

THE HONOURABLE MR. HOSSAIN IMAM : Do we take it that the alleged action was taken by the Provincial Government and not by the military ?

GENERAL THE HONOURABLE SIR ALAN HARTLEY : Not by the military authorities.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : What is the action taken by the Bengal Government ?

GENERAL THE HONOURABLE SIR ALAN HARTLEY : I do not know ; I cannot tell you.

MINTING OF COPPER COINS FOR AUSTRALIA.

62. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Is it a fact that Government have decided to supply copper coins to Australia; and in pursuance of this decision, Indian mints are minting, or have recently been minting the coins for being sent to Australia?

(b) If the reply to (a) be in the affirmative, will Government state whether Australia has supplied the copper or other metal required in the process of minting.

(c) To what extent and of what value the coins have been minted in India for supply to Australia? And at what charge?

(d) Have Government received any representation from the Bengal National Chamber of Commerce, or any other body, on this subject; and what steps have Government taken for increasing the supply of small coins in India?

THE HONOURABLE MR. C. E. JONES : (a), (b) and (c). An order for 9 million bronze pennies and 6 million bronze half-pennies for Australia was undertaken as long ago as December, 1941. This was a considerable time before the small coin shortage became manifest in India and was undertaken in pursuance of Government's policy of utilising to the full their available resources for the common Allied cause. No later order has been accepted.

The materials employed came from Government stocks and the transaction was completed at a reasonable profit to Government.

(d) The answer to the first part of this question is in the affirmative. As regards the second part, I would only add to what I have said in reply to the Honourable Member's question No. 13 on the 16th February, 1943, that there is no intention to enter into any further foreign commitments till the domestic position has been restored.

THE HONOURABLE MR. HOSSAIN IMAM : Will the Honourable Member tell us when the order was completed by the mints ?

THE HONOURABLE MR. C. E. JONES : The order was undertaken in December, 1941, and it was completed several months later. I cannot give the exact date.

THE HONOURABLE MR. HOSSAIN IMAM : Would we be correct in presuming that during that period copper coins for India were not being minted ?

THE HONOURABLE MR. C. E. JONES : I do not think so.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Does the Honourable Member mean that copper coins were minted for India during that period ?

THE HONOURABLE MR. C. E. JONES : I think that is the case. The period when we discontinued the minting of copper coins for India—it was a short period—in order to concentrate on coins of higher value was after the shortage became acute in this country; and that was subsequent to the minting of copper coins for Australia.

THE HONOURABLE MR. HOSSAIN IMAM : Is it not a fact that this shortage was augmented by the non-issue of copper coins by the mints during that period ?

THE HONOURABLE MR. C. E. JONES : During what period ?

THE HONOURABLE MR. HOSSAIN IMAM : During the period that the mints were engaged in minting copper coins for Australia.

THE HONOURABLE MR. C. E. JONES : I have already mentioned that the minting of copper coins for Australia took place before the shortage of small coins in India became acute.

IMPORT INTO BRITISH EAST AFRICA OF TEXTILES FROM INDIA.

63. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : Is it a fact that the Government of East Africa have made a proposal that the Government of India should grant a sole monopoly for the import of textile goods from India to a special corporation in that country? If so, what decision has been reached by the Government of India in the matter?

THE HONOURABLE MR. N. R. PILLAI : The Government of India have just received from the Government of British East Africa a communication setting forth the details of a proposal to canalise imports of certain varieties of textiles into British East Africa through an association of established importers. This matter is under examination.

PUBLICATION OF BALANCE SHEETS BY CERTAIN PUBLIC UTILITY UNDERTAKINGS.

64. THE HONOURABLE MR. G. S. MOTILAL : (a) Will Government state the nature of business of the companies which are required by Government not to publish their balance sheets ?

(b) Does the non-publication of balance sheets serve any useful purpose ?

(c) Are Government aware that the shareholders of the companies which have discontinued publishing their balance sheets are at a loss to understand the true position of the companies on account of non-publication of balance sheets ?

(d) Do Government propose to revise the order or notification?

THE HONOURABLE MR. N. R. PILLAI : (a) The attention of the Honourable Member is invited to clause (3) of rule 45B of the Defence of India Rules.

(b) Yes. This action has been taken to withhold from the enemy any information relating to the expansion of the output of Public Utility Undertakings in order to meet wartime requirements and to the general activities of such Undertakings and also particulars of damage by air raids, if any.

(c) Government regret any inconvenience caused to shareholders but, as the Honourable Member will appreciate, the measure is a wartime necessity. It will be observed, however, that the rule containing a proviso which enables a shareholder to inspect the documents in question at the office of the company concerned.

RULES FOR THE TREATMENT OF DETENUS IN THE CENTRALLY ADMINISTERED AREAS AND THE PROVINCES.

65. THE HONOURABLE PANDIT H. N. KUNZRU : Will Government lay on the table a copy of the rules relating to the treatment of detenus in the centrally administered areas and the provinces ?

THE HONOURABLE MR. E. CONRAN-SMITH : The Honourable Member is referred to my answer to part (a) of his question No. 27 on the 22nd February, 1943.

TOTAL VALUE OF SMALL COINS IN CIRCULATION AT THE OUTBREAK OF WAR.

66. THE HONOURABLE PANDIT H. N. KUNZRU : What was the total value of small coins in circulation in the country before the war and what is the value of the addition made to them by Government since then ?

THE HONOURABLE MR. C. E. JONES : Information is not available as to the total value of small coins in circulation at the beginning of the war. The value of the small coins put into circulation since the war commenced till the end of December, 1942 was Rs. 22½ crores.

THE HONOURABLE MR. HOSSAIN IMAM : May we know, Sir, what is the usual annual production of small coins in ordinary pre-war times ?

THE HONOURABLE MR. C. E. JONES : Is the Honourable Member referring to the number of coins or their value ?

THE HONOURABLE MR. HOSSAIN IMAM : Value, Sir.

THE HONOURABLE MR. C. E. JONES : I regret I cannot give that information without notice.

CORRESPONDENCE BETWEEN H. E. THE VICEROY AND MR. GANDHI.

67. THE HONOURABLE MR. HOSSAIN IMAM : Will Government lay on the table or place in the Library of the House copies of the letters from Mr. Gandhi to the Governor General of 14th August, 1942 and to the Secretary, Government of India, dated 21st September, 1942 ?

THE HONOURABLE MR. E. CONRAN-SMITH : With your permission, Sir, I will reply to questions Nos. 67 and 69 together.

Copies of the correspondence referred to, which has already been published, have been placed in the Library of the House.

SUPPLY OF NEWSPAPERS TO MR. GANDHI.

68. THE HONOURABLE MR. HOSSAIN IMAM : Will Government give the names of newspapers supplied to Mr. Gandhi with the dates from which they reached him during August—September, 1942 ?

THE HONOURABLE MR. E. CONRAN-SMITH : About a fortnight after his detention Mr. Gandhi was informed that he could see any newspapers he wished, within reason, including back numbers from the date of his arrest. Government have no information as to the papers which he actually selected or of the dates on which they reached him, but they presume that they were delivered promptly.

THE HONOURABLE MR. HOSSAIN IMAM : May we know, Sir, on what grounds Government have this presumption ?

(No answer.)

CORRESPONDENCE BETWEEN H. E. THE VICEROY AND MR. GANDHI.

69. THE HONOURABLE MR. HOSSAIN IMAM : Will Government place in the Library an authorised version of the communications which passed between Mr. Gandhi and the Governor General and the Government of India from 31st December, 1942 to 9th February, 1943 ?

(See reply to question No. 67.)

CONGRESS RESPONSIBILITY FOR THE DISTURBANCES.

70. THE HONOURABLE MR. HOSSAIN IMAM : Will Government lay in the Library or place on the table of the House the papers containing the evidence referred to in the following sentence of Lord Linlithgow's letter to Mr. Gandhi of 5th February, 1943 ?

"There is evidence that you the arrest of Congress leaders".

THE HONOURABLE MR. E. CONRAN-SMITH : The Honourable Member's attention is invited to the publication *Congress Responsibility for the Disturbances, 1942-43*, which was published on the 22nd instant. Copies of this publication have been placed in the Library of this House.

RESOLUTION RE CO-ORDINATED POLICY IN RESPECT OF WHEAT AND OTHER FOOD STUFFS—*contd.*

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS) : We will now proceed with the Resolutions. Further discussion of the following Resolution moved by the Honourable Pandit Kunzru on the 16th February, 1943 :—

"This Council recommends to the Governor General in Council that as the recent removal of control over the price of wheat is likely to affect the consumer adversely, it is essential that a co-ordinated policy should be followed throughout the country in order to protect the interests of the consumer and further recommends that a similar policy should be followed in regard to other foodstuffs."

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, several interesting points arise out of the discussion which took place the other day in this House on my Resolution. These points arise mainly out of the speeches of the Honourable Sir Jogendra Singh and Mr. Holdsworth. Mr. Holdsworth gave the House some information regarding the points that I had raised. He said, for instance, that the quantity of wheat ordered from Australia was much more than 30,000 tons and that the supply now received or about to be received was not necessarily final. I should very much like him to explain the position of the Government in this matter a little further. Government are well aware of the shortage that would accrue in the coming year. Part of this shortage, as the Commerce Member has repeatedly pointed out, is due to the increased Defence requirements. I do not know what those requirements

[Pandit Hirday Nath Kunzru.]

are, nor do I know how much wheat was purchased by the Military authorities last year. But, considering the size of the forces, I should think that the quantity of foodstuffs purchased by them could not have been less than half a million tons. How much of the foodstuffs purchased by them consisted of wheat is a question on which we have no information. But I think it would be fair to ask Government to press His Majesty's Government to release sufficient shipping to enable us to get at least as much as is required by the Defence authorities. The Honourable Member has told us that the wheat received from Australia would be more than 30,000 tons and has also assured us that more shipments would be received. But he has not made the situation quite clear. I asked him definitely whether the shipments would continue during the coming year. His reply on that point was absolutely vague. I hope, therefore, that he will make the matter clear and tell us what is the extent of the wheat that we hope to receive from Australia and whether enough wheat at least will be obtained from that source to satisfy the Defence requirements, etc.

Apart from this, Sir, I should like to know the result of the "Grow More Food" campaign up-to-date. My Honourable friend Sir Jogendra Singh, when dealing with this question, referred to it the other day. He dealt with the question of prices and said that they were a function of many factors three of which were the quantity of food grown in the country, the arrangements made for the movement of food and the value of the rupee. I referred to two of these factors the other day myself but I did not say much regarding the increased production of food. Last year a campaign was undertaken in this connection. My Honourable friend Mr. Holdsworth gave us no information in his speech, so far as I remember, regarding the results of the campaign that was initiated last year. I gather from the papers that some information on this subject was given in the other House. But as the report of Mr. Tyson's speech is very meagre, it does not enable us to understand the situation fully. Besides, it does not enable us to know what further efforts Government propose to make in the coming year in order to increase the supply of food.

There is one other point, Sir, with regard to the requirements of the deficit areas that I should like to draw the attention of my Honourable friend Mr. Holdsworth to. He said in his speech that the Government of India had purchased 50,000 tons of wheat which would be quite enough for the needs of the deficit provinces. (The Honourable Mr. B. G. Holdsworth indicated dissent.) That is what I have taken down. I might have misunderstood him. If I have misunderstood him, he will doubtless be able to correct me. But I am referring to this point only because Mr. Sarker gave a different figure in another place on this subject. I think he said that at least 60,000 tons of wheat had been purchased by Government since Government had decided to decontrol the price of wheat. At any rate, I should like to know from my Honourable friend Mr. Holdsworth what he said with regard to the quantity of wheat already purchased by the Government for the deficit provinces? And in this connection I should like to know the price at which it would be available to the deficit provinces? Again, Sir, I should like to know whether, apart from wheat Government are going to purchase other foodgrains also, for instance, *jowar* and *bajra*? The United Provinces grow more *jowar* and *bajra* than are required by it. But Bombay, on the other hand, requires to import not merely wheat but also *bajra* and *jowar*. Will the Central Government therefore purchase not merely wheat but also *jowar* and *bajra* and other foodstuffs to satisfy the needs of those provinces that may be short of them? (The Honourable Mr. B. G. Holdsworth nodded assent.) I gather from the nods of Mr. Holdsworth that Government are going to purchase not merely wheat but these foodstuffs also. I am glad to hear that. Of course unless this is done the needs of the poor people in the deficit areas will not be supplied. Again, Sir, my Honourable friend Mr. Holdsworth said that the expert from England who was going to be employed was not a rationing expert. I do not know what exactly would be his qualifications but the Food Member said at a Press Conference recently that the food expert who would soon come from England would advise the Government on rationing and other problems. What the other problems are I do not know, but it is clear that he is going to be consulted with regard to the important question of rationing. This is another point on which I should like to have some information. What is the scheme of the Government with regard to the rationing of food? Food is already being rationed in certain Indian States and the

arrangements that have been made there have, so far as I know, proved thoroughly successful. Now, was it not possible for Government, without obtaining an expert to advise them in regard to rationing, to profit by the experience of States like Gwalior, Bhopal and Indore which are already rationing food and follow the measures adopted by these States in so far as that was possible? Again, Sir, rationing is possible only when the necessary quantity of food has been obtained. Now, how is the quantity of food required going to be obtained so long as the price control is going to be retained? The position of the Government of India now is that the removal of control over the prices of wheat has proved thoroughly successful and that during the short time that has elapsed since the decontrolling of the prices of wheat they have been able to purchase far more wheat than they could previously. If this is the experience of the Government of India, I do not know whether they have advised the Provincial Governments also to benefit by their experience and remove control over the prices of wheat if they cannot adopt measures in order to compel the cultivator to part with his produce at fixed prices. I do not think that any Provincial Government will at the present time at any rate take the risk of creating dissatisfaction, indeed serious dissatisfaction, among cultivators by taking any such steps. If such is the situation, how are the Provincial Governments that are still controlling the prices of wheat going to obtain sufficient quantities of wheat for the requirements of the populations within their jurisdiction?

There is, Sir, just one more point that I should like to bring forward. I referred the other day to a number of foodstuffs, but I omitted to refer to *gur* which forms an important source of income to agriculturists in the United Provinces. Now, the export of *gur* from one district to another even within the province is, I understand, restricted at present. Apart from this the wagons required for the export of *gur* are not available and I understand that the Provincial Government alone is not responsible for it. I have been told, though I do not know with what truth, that the Railway Board themselves are inclined to restrict the number of wagons to be made available for the carriage of *gur* from one place to another. Perhaps this is being done in the interests of the sugar manufacturers. If it is so, I strongly protest against such a policy. Had the richer classes been interested in *gur*, Government would have thought not once or twice but ten times before imposing restrictions on the movement of *gur* from one place to another, but it is a thing produced by poor men for the needs of the poorer classes.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : On a point of order, Mr. Chairman. Is it proper for the Honourable Member in the course of his second speech to break new ground on which other members have no chance of speaking?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : This question of *gur* is connected with foodstuffs. I have referred to a number of them and I thought I might draw the attention of Government to some points connected with *gur* also.

THE HONOURABLE MR. HOSSAIN IMAM : My point is, that we are deprived of expressing our views. If the Honourable Member had mentioned these things in the first part of his speech then it would have been open for all of us to discuss it. Now we cannot discuss it and therefore we are deprived of the opportunity of discussing these things by his bringing them in in the last stage.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS) : I do not think you need elaborate.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I do not think, Sir, that the scope of any member's remarks was restricted by what I said. Every member dwelt on that aspect of the Resolution which interested him. The House discussed the Resolution as a whole and not merely my remarks. My Honourable friend's objection, therefore, seems to be out of place. However, I hope in any case that my Honourable friend Mr. Holdsworth will be able to give us some information on this point.

Lastly, I should like to know from him what is being done to cheapen the cost of food to the poor consumer. Government may take measures to purchase wheat and *jowar* and *bajra* and other foodstuffs. It may provide enough transport to move these foodstuffs from surplus to deficit areas but if the prices which have to be paid for them are high how is the poor consumer going to obtain them and if Government cannot supply cheap food to the consumer and cannot supply it in a sufficient

[Pandit Hirday Nath Kunzru.]

quantity, what is the good of having a Rationing Expert or going in for rationing? To speak of rationing at the present time is practically to throw dust into the eyes of the public and to make it feel that Government are going to do something to relieve its troubles when the measures they are going to take do not amount to much. The whole question has shown the utter incompetence of the Government in my opinion. A problem of such fundamental importance has been dealt with in rather a casual manner. The question was not brought under consideration sufficiently early and even when it began to receive the attention of Government, sufficient measures were not adopted to satisfy the needs of the consumer. I should like to feel that Government are at least now alive to the importance of the problem and are going to take steps not merely to send food from one area to another but to make it possible for the poorer classes to get sufficient food of the kind that they are accustomed to. The poor man is being doubly hit at the present time. He has to pay high prices and not merely for the foodstuffs that he buys but also for the fuel that he needs to cook his food. How high the price of fuel has gone up we all know. Unfortunately I could not deal with it as my Resolution was confined to foodstuffs. Government should bear this point in mind when considering the prices at which food ought to be supplied to the poorer people. Food subsidies have been given in England not merely to enable the cultivators to grow more food but also in order to cheapen its cost to the consumer. Have Government any such scheme in mind here? Are they going to give any subsidies for the production of food and are they going to incur any expenditure themselves in the interests of the poorer classes? I hope that my Honourable friend Mr. Holdsworth will be able to give us such information on this subject as will enable us to feel that whatever the difficulties of the higher classes might be the poorer people will have an easier time than they have had during the last twelve months.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): Do you wish to say anything, Mr. Holdsworth?

THE HONOURABLE MR. B. G. HOLDSWORTH (Food Secretary): It is for you to decide, Sir. I have already spoken on this Resolution.

THE HONOURABLE SAYIED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan): Can I speak now, Sir?

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): No, you cannot speak now. You should have come here earlier.

THE HONOURABLE SIR JOGENDRA SINGH (Education, Health and Lands Member): May I just give a piece of information? The Honourable Mr. Sapru enquired what were the results of the "Grow More Food" campaign.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Mr. Sapru did not.

THE HONOURABLE SIR JOGENDRA SINGH: I am sorry; I mean the Honourable Pandit Kunzru enquired what were the results of the "Grow More Food" campaign. I can tell him that we secured 28 lakh tons of more food. As to the future possibility of growing more food—

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: How much food had you planned to grow?

THE HONOURABLE SIR JOGENDRA SINGH: Eight million acres were put under food and we got 28 lakh tons of grain.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: What is the quantity that you had expected to get through your campaign?

THE HONOURABLE SIR JOGENDRA SINGH: I have not followed the question.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: How much food had you planned to grow? What is the quantity of food that you had expected to get?

THE HONOURABLE SIR JOGENDRA SINGH: There was no definite quantity planned. Eight million acres were secured and put under food—taken away from cotton and other crops—and we got 28 lakh tons of grain.

For the future it is difficult to say whether we will be able to keep this area under food crops as food crops have to compete with prices of cotton and ground-nut. Ground-nut and cotton have yielded much higher prices than the food grown by the producer and it seems that it would be difficult to retain this area under food crops next year.

The second question asked by the Honourable Member was what we were doing to increase food production. We have set up goals for each province now and secured their co-operation in keeping increased an area under food crops as far as possible. We have also plans to supply seed, manure and to help the provinces with certain amount of finances to start their food campaign in right earnest but it is difficult to bring new area under cultivation for two or three reasons. Unless irrigation is available it is not possible to break new land and put under crops. The second limiting condition is the supply of manure. We can get no fertilizers and there is not sufficient quantity of manure available in the country. There is oil-cake, which gives very good results if applied as manure. But again, if we use oil-cake for feeding the soil, we deprive cattle of their food.

So far as the campaign for increasing food production is concerned, plans have been made, and are being put into operation. But the main point to which I would draw the attention of the Honourable Mover of this Resolution is the mass psychology—the confidence of the people. The confidence of the people has been greatly shaken by the campaigns in the Press and on the platform regarding the food position.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Also by the actions of Government.

THE HONOURABLE SIR JOGENDRA SINGH : Well, if the confidence of the people is restored, I have every hope that the needs of the country will be met.

The question of cheapness is a difficult one, and I am not concerned with it. I will say nothing about it.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : My Honourable friend Mr. Holdsworth does not seem to be aware, being new to this House, that he has the right to speak again.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS) : He does not want to.

THE HONOURABLE MR. B. G. HOLDSWORTH : I should welcome an opportunity to answer the questions put by the Honourable Member.

Sir, the Honourable Mover asked me what quantity of wheat we have arranged to import from Australia, and whether the Government of India are prepared to consider approaching His Majesty's Government for an import of wheat sufficient to cover the requirements of the Defence services.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : At least.

THE HONOURABLE MR. B. G. HOLDSWORTH : I should like to point out, in the first place, that the great majority of the personnel of the Defence services are inhabitants of this country, and that, while there might be a very reasonable case for approaching His Majesty's Government for special assistance to meet the requirements of non-residents of this country who are supplied from here because of the war, I am afraid the case for special assistance for supplying persons who in any case would have to be fed from this country is not very strong. I may say, however, that considerable assistance towards meeting the Defence requirements has been afforded by His Majesty's Government already, and that large shipments, amounting to over 100,000 tons, were arranged for last year, and have been proceeding ever since, to relieve the calls which the Defence services have been making on the wheat supplies of this country. In addition to these shipments, additional shipments have now been arranged. I must ask the Honourable Pandit Kunzru to excuse me from giving exact figures: there are very sound reasons why these figures should not be published. But I can assure him that they are substantial, and that the quantity is in excess of that previously arranged for. These shipments are coming from overseas in this and the succeeding month. And, as I said in my previous speech, that is not necessarily the end of the importation; arrangements and negotiations on this matter are proceeding constantly. We do not attempt to fix things up for a whole year to come. It is impossible to do so. No one can say what the situation is going to be. And before we can make to His Majesty's Government any request for assistance during the forthcoming year, we must be in a position to say exactly what our expectations from the next *rabi* crop are. We are not yet in possession of forecasts of that crop; but I may say that the prospects seem extremely good. But until we have something more definite than we have at present, the question as to what assistance will be necessary for India after the forthcoming *rabi* season cannot be settled. I trust that

[Mr. B. G. Holdsworth.]

the Honourable Mover of the Resolution will be satisfied with the information which I have been able to give him, on this short notice, to that part of his question.

I can assure the Honourable Mover that the Government of India propose to bring within their scheme of Government purchase and distribution all the principal foodgrains of the country—wheat, rice, the millets, gram, and possibly the *dals*; the question of the *dals* is still under consideration, but as far as possible we wish to cover the main items of dietary in the country.

As regards the quantity of wheat that has been bought in the Punjab, there was some difficulty expressed about different figures quoted by myself and by the ex-Honourable Member in charge of the Department. We possibly were referring to different periods. Speaking from memory, I think the position is that between 70,000 and 80,000 tons of wheat have been purchased since the 25th January of this year. I may say that the Government of India are of opinion that statutory maximum prices in the primary wholesale market are liable to interfere with the flow of supplies from the producer into the market. The Government of India have made all the Provincial Governments aware of their opinion in this respect, and are taking up the matter with those Governments who so far have not seen their way to following the example which has been set, in the hope, as I said in my last answer to this Resolution, that we shall be able to reach a co-ordinated policy on the part of all.

I have been asked whether Government are going to introduce rationing, and I have been asked what is the purpose of rationing unless adequate supplies can be assured. That is a very sound question. Rationing in this country is not going to be an easy matter. I am aware that certain Indian States have already introduced measures to that effect. The Economic Adviser to the Government of India has paid a visit to Indore, and has brought back information of considerable value and assistance to us in framing our own plans. As I said before, all the Provincial Governments have been advised by the Government of India to carry through preliminary operations with a view to putting into force a rationing scheme immediately the situation seems to demand it and to warrant it. I may say that before introducing such schemes we shall pay very careful attention to the point to which the Honourable Mover referred in stressing the necessity for being sure beforehand that we should have sufficient supplies to guarantee the ration.

There was a reference, Sir, to control of the movement and price of *gur*. Perhaps this particular reference strayed outside the terms of the original Resolution, which was restricted, I think, to foodgrains.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Foodstuffs; not foodgrains.

THE HONOURABLE MR. B. G. HOLDSWORTH: I should like to inform the Honourable Mover that *gur* became, towards the end of last year, an object of very heavy speculation, and the price rose extremely rapidly to unheard of heights on the market. With a view to checking this speculation, certain measures of control were introduced in the United Provinces. There was no prohibition—though at first these measures might seem to have had that effect. The position now is that the Government of the United Provinces have adopted the same attitude towards *gur* that the Government of India are adopting towards foodgrains, that is to say, they are controlling the export and are arranging that permits should be issued only to the extent of the normal quantities consumed in the various destinations. The idea is to prevent *gur* being hoarded and being used for speculative purposes. It is perfectly true that the price of *gur* has repercussions on the sugar industry. But it was to prevent speculative activities that the control system of the United Provinces Government has been introduced. There is no prohibition. There is simply Government regulation with a view to controlling the quantities and the recipients of the article exported.

Finally I have been asked if Government are aware that the price of foodstuffs is a factor of considerable importance to the poor. Of course that is a fact of which Government could not possibly be unaware. It is unfortunate that the price of foodstuffs has risen as high as it has. It is regrettable that we have been unable to keep the price at a lower level. It is true that as the result of the decontrol of wheat, there was a marked increase in the price. I am glad to say that the price has fallen by more than Rs. 2 from its highest level and is still falling. The Government purchasing operations are designed to control the price without imposing statutory

maxima. Statutory maxima tend to drive the grain underground. They tend to make it by-pass the ordinary markets. They involve resort to the black markets where prices are completely uncontrolled. By setting up a purchasing agency in the producing area and restricting the privilege of export to that agency, Government hope to reduce competition in the markets of that area. The reduction of competition should, according to the normal operation of the laws of supply and demand, result in keeping prices at a lower level than they would reach if there were a number of bidders in the market. When we obtain supplies, it is our intention to keep those supplies under Government control until they reach the ultimate consumer. The profits of the middlemen intervening in that operation will be strictly regulated. As I said in my last remarks, price control is possible only if you have supply control, and in respect of the exports which we shall be making to the deficit provinces through the Government agency, we shall have and propose to exercise supply control. We also propose to exercise price control based upon the prices we have to pay in the free primary wholesale market. There have already been set up in various areas cheap grain shops at which grain is sold often at a price below cost. Sometimes these shops are run by Government and sometimes these shops are run by employers of various sorts. By these measures the Government hope to keep the price of grain within the limits of the poor people.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Where are these cheap grain shops run by Government?

THE HONOURABLE MR. B. G. HOLDSWORTH: There are some in Calcutta and some in Bombay.

THE HONOURABLE SIR SHANTIDAS ASKURAN (Bombay: Non-Muhammadan): About 70 shops have been opened by the Government in Bombay, where they sell at controlled price.

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): There are some also in Madras, selling at controlled price.

THE HONOURABLE LT.-COL. SIR HISSAMUDDIN BAHADUR (Nominated Non-Official): At Bhopal there is a State scheme to run very cheap grain shops, selling wheat at eight seers per rupee.

THE HONOURABLE MR. B. G. HOLDSWORTH: There seems to be considerable support for my statement that shops are selling grain at controlled prices, and that definitely cheap prices are in existence in many parts of the country.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: The Honourable Member spoke of cheap grain shops.

THE HONOURABLE MR. B. G. HOLDSWORTH: The last question which was put, if I caught it correctly, was the question whether Government would subsidise production. I am glad to say that the Honourable the Finance Member has promised very considerable assistance with a view to making grants in connection with the "Grow More Food" campaign. The provinces have been informed of the provision made and have been urged to expand their operations even beyond the limit which they reached last year. They have been told that if they require funds for this purpose, they should apply to the Central Government where provision exists for meeting their necessity. To this extent arrangements are already in existence for subsidising production.

I trust, Sir, that the remarks which I have been able to make, at short notice, on the additional questions which were put to me this morning will satisfy the Honourable Member.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS) (to the Honourable Pandit Kunzru): Do you wish to press your Resolution?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Government have accepted the Resolution.

THE HONOURABLE MR. B. G. HOLDSWORTH: I have accepted the Resolution.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): Resolution moved:—

"This Council recommends to the Governor General in Council that as the recent removal of control over the price of wheat is likely to affect the consumer adversely, it is essential that a co-ordinated policy should be followed throughout the country in order to protect the interests of the consumer and further recommends that a similar policy should be followed in regard to other foodstuffs."

Question put and Motion adopted.

**RESOLUTION RE NUMBER OF ORDINANCES PROMULGATED SINCE THE
OUTBREAK OF WAR—contd.**

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): We will now proceed with the discussion of the Resolution* moved by the Honourable Mr. P. N. Sapru on the 16th February, 1943.

†**THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadian):** Mr. President, I do not think it is necessary for me to read the Resolution as it was read by me the other day, when it was taken up for discussion by the House. From a question which I put I gather that the number of Ordinances promulgated by the Governor General since August, 1942 is 41 and the number promulgated since the inception of the war is 115. According to a calculation which I have made the figure should be 116 and not 115. I will just read out my calculation :—

1939	9 Ordinances.	1943	12 Ordinances.
1940	14 "		
1941	13 "	Total	116 "
1942	68 "		

Perhaps the Honourable the Law Member will tell me whether I am wrong ?

THE HONOURABLE SIR SULTAN AHMED (Law Member): I am not here to contradict my Honourable friend on these small points. He may be right.

THE HONOURABLE MR. P. N. SAPRU: The answer goes on further to say that two of the Ordinances may be said to take away the jurisdiction of the High Courts and substitute Special Courts for them in regard to a certain class of cases and that the death penalty has been made impossible in two Ordinances. The House will see that the effect of these Ordinances, particularly the two Ordinances which I have in mind, to which I shall draw the attention of the House, is to substitute to a very large extent the rule of executive discretion for the rule of law. Now, these Ordinances are extremely drastic in their nature and do away substantially with many judicial safeguards. Sir, the one thing that is to be noted in regard to these Ordinances is that they have been passed by the Governor General who is the agent in this country of an alien Government, I mean of a Government responsible to the people of another country, on his own responsibility. The Governor General possesses powers independently of the Legislature. He can legislate on his own authority without any reference to the Legislature which may be regarded as a purely advisory body. He could formerly legislate only for a period of six months. But since the amendment of the Government of India Act in 1940 he can legislate by Ordinance for the duration of the war and I think six months after. Now, these Ordinances which were passed by the Governor General have never been placed before the Legislature for consideration in any shape or form whatever. They have never been placed before the Legislature for ratification. Assuming—and I am not going to deny this proposition, I would like the Honourable the Law Member to note this point—assuming that an emergency existed and there was need for expedition in passing them, I cannot understand why they were not at a subsequent stage placed before the Legislature for ratification. Sir, the need for safeguards against executive discretion is greater in India than even, for the matter of that, in England. As a matter of fact in a famous judgment, I think in the case of *Liversedge*, Lord Aitkin remarked :—

“In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of Justice. And it is a tradition of British justice that Judges should not shrink from deciding such issues in the face of the executive”.

Now, Sir, the need for safeguards in the case of a country like India is I say greater than even in England, for here the executive is irremovable and irresponsible. It is an executive which derives in no sense any authority from the people of India. It is an executive which is in no sense responsible to the people of India. It is an executive which is responsible to the electorate of another country in the ultimate analysis. The need for safeguards is greater in the case of this country because in

* “This Council recommends to the Governor General in Council to appoint a committee, with adequate representation of judges and lawyers, to review the scope of the Ordinances promulgated by the Governor General since the commencement of the war and their effect on the powers of the High Courts as criminal courts of appeal.”

† Not corrected by the Honourable Member.

many provinces—in six provinces at all events—provincial autonomy is not functioning. We have in those provinces the rule of one solitary individual called the Governor and that Governor is in turn responsible not to the Government of India but to the Governor General. Therefore, you have in those provinces what might be described, and what in fact is in many cases, a Hitlerian or Mussolinian rule. Therefore, it becomes all the more necessary that such judicial safeguards as the right of appeal or the right of revision to the High Court should not be entirely dispensed with. There is another reason why we should attach some importance to judicial safeguards. I do not wish in the slightest degree to reflect upon the character of the Indian police. He will be a bold man who will say that the traditions and the character of the Indian police compare favourably with the traditions and character of the police in Great Britain or the self-governing Dominions. We who practise before the Courts of law know how unreliable in many cases the police evidence is. The Honourable the Law Member has been an eminent criminal lawyer himself. He was Advocate General and he was Government Advocate. In those capacities he used to see the cases from the point of view of the prosecution. But our experience is that when prosecution counsel go to the Bench they prove good criminal judges because they know the tricks of the prosecution better than the counsel for the accused do. They know that the police force can get support from the Government under any circumstances. There is no popular Government to control it and the tendency is to support the police because this is a time of difficulty and we must not do anything which will undermine their morale. Therefore, that sort of feeling makes them feel that they can do things in any way they like. Sir, they feel that with special courts and special procedure they can be sure of obtaining convictions more easily than under normal courts and normal procedure. I am saying all this to show that there is a great need for judicial safeguards in India. Now, Sir, rightly or wrongly, I think rightly, rightly or wrongly, High Courts have come to be associated in the public mind with justice and I think I would be right in saying that their reputation for impartiality stands very high. The people therefore value a system under which the judiciary and the magistracy is subordinate to the High Court. The High Courts are regarded as the greatest protection that a citizen has in a country like India. The effect of two of the Ordinances, the Ordinance setting up Special Criminal Courts and the Ordinance for the trial and punishment of enemy agents and persons committing certain offences with intent to aid the enemy, is to take away entirely the jurisdiction of the High Courts.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : The number of the second Ordinance ?

THE HONOURABLE MR. P. N. SAPRU : The number of the second Ordinance is Ordinance No. I of 1943. Sir, I do not deny, as I have said before, the existence of a state of emergency. Both the external and internal situations are serious and it is possible that the ordinary law of the land needs strengthening. I am not going to dispute that proposition. The question is whether there was any need for the Special Criminal Courts Ordinance. Now, if you will look at the Special Criminal Courts Ordinance you will find that it sets up three kinds of Criminal Courts : Special Judges, Special Magistrates and Summary Courts (section 3), and then it increases the powers of Magistrates and Judges—Special Judges—Sir, can pass any sentence, even a death sentence. Then so far as Special Magistrates are concerned they can pass any sentence up to a period of seven years and so far as Summary Courts are concerned they can pass any sentence up to a period of two years. Then, Sir, the rights of appeal are very much curtailed and so far as appeals from the judgments of Special Judges are concerned they are to go not to the High Courts but to a Judge of the High Court appointed by the Executive Government. Therefore, the selection of the Judge is not going to be by the Chief Justice. It is the Chief Justice who constitutes Benches, but in this case the powers of the High Court have been taken away. What is contemplated is that in cases which involve a sentence of seven years, or where a Special Judge certifies that the question of the law of importance is raised a Special Judge may review the position.

Now, Sir, the scope of these Ordinances has been considered by four High Courts in recent months. It was considered by the Allahabad Court, the Patna Court, the Nagpur Court and then by the Bombay Court. Now, Sir, if we go

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through these rulings we find that there are some divergences and there are agreements also in those rulings. The position, as far as I have been able to understand it, is this. All the High Courts agree that the Ordinances could be promulgated by the Governor General. They do not accept the argument, which was advanced by Counsel in these Courts, that the Ordinances are *ultra vires* the Governor General; they take the view that they are *intra vires* the Governor General. They also take the view that it was open to the Governor General to delegate his authority to promulgate these Ordinances to the Governor in his discretion and therefore so far as the validity of these Ordinances is concerned I am not going to dispute it. I think I am bound to accept the judgment of four High Courts. All that I would say is that when I was reading the Government of India Act, I felt that there was an argument which does not seem to have been advanced so far as validity is concerned and I should like to know the meaning of those words. I would refer you to the proviso at the end of section 93 (1) which says :—

“ Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend either in whole or in part the operation of any provision of this Act relating to High Courts ”.

I do not know, Sir, whether the attention of the Courts was drawn to this sub-clause in the arguments of Counsel and I do not wish to base any argument on this sub-section. I am bound to accept, however, the position that the Ordinances had been held to be valid by those High Courts.

Now, Sir, so far as the revisional powers of the High Courts are concerned there is a difference of opinion. In the Allahabad High Court two of the Judges, Chief Justice Iqbal Ahmad and Collister J. took the line that the Ordinances had retrospective effect. One of the Judges, Mr. Justice Bajpai, took the line that the Ordinances had no retrospective effect, that is to say, they could not be applied to crimes which had been committed before the Ordinances came into operation which could not be tried by the Special Courts. This was the view which was taken by Mr. Justice Bajpai, but he went on also to point out :—

“ The jurisdiction of other Courts which ordinarily would have jurisdiction either under the Criminal Procedure Code or any other law is ousted by section 26 only if the proceedings are valid under the Ordinance and it could not have been the intention of the Legislature nor has it been so expressed that the Special Criminal Courts have been given an unfettered jurisdiction to act even in violation of the provisions of the Ordinance or to pass orders under the colour of the Ordinances when they have no such order ”.

This was the view that was taken by Mr. Justice Bajpai but the view which was taken by the Chief Justice was a little different and Mr. Justice Collister agreed with him :—

“ The words of section 26 are very wide and in my judgment completely bar the revisional jurisdiction of this Court in cases tried and decided by Special Magistrates or Special Judges. . . . As to whether the appellate and revisional jurisdiction of this Court should have been so nullified is a question with which I am, of course, not concerned ”.

Therefore, whereas Mr. Justice Bajpai holds that the Courts can look into the question whether a particular case comes within the ambit of the Ordinances or not, the opposite view is taken by the Chief Justice and Mr. Justice Collister, namely, that they cannot even look into the question whether a particular case comes within the ambit of the Ordinances or not.

I shall now go on to the Nagpur case. There again we find that there was a difference of opinion between Mr. Justice Niyogi and Mr. Justice Digby. The difference of opinion was referred to a third Judge—the Chief Justice. The line that Mr. Justice Niyogi takes is that the Ordinance cannot have retrospective effect, that is to say, it cannot apply to cases which have already been taken cognizance of by ordinary Courts. Further he takes the view that the civil Courts have inherent jurisdiction to question the validity of laws passed by the Indian or Provincial Legislature, and that the High Court can enquire into the validity of the Special Criminal Courts Ordinance. He takes further the view that the Ordinance does not preclude the High Court from considering whether the executive acted *intra vires* the Ordinance or not; that is to say, it can go into the question whether a case could come within the purview of the Ordinance or not. This jurisdiction, Mr. Justice Niyogi holds, is not barred. But a contrary view is taken by the other Judges.

Now, so far as the Patna High Court is concerned, they take the view—there was a full Bench there—that the Ordinances are valid. They further take the view

that the High Court cannot revise orders of the special Judges, as these Special Courts are not inferior courts. They take the line that the Ordinance has no retrospective effect, in the sense that it cannot apply to a person against whom there is a case of which a magistrate has taken cognizance. Not the date of the offence but the date of taking of cognizance is, according to them, the test. According to Mr. Justice Bajpai, the date of the offence is the test. According to the Patna view, not the date of the offence but the date of taking of cognizance is the test.

Now, there is another case, which came up before the Bombay High Court. I have not yet been able to lay my hands on the case, because I do not find it reported yet in the Law Reports; therefore I am speaking from the collection and from newspaper reports. They have taken the line that the Ordinances are valid, that they can have retrospective effect, and that the jurisdiction of the High Court is barred by these Ordinances.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): The Honourable Member has already taken half an hour now. Let him proceed to the other points.

THE HONOURABLE MR. P. N. SAPRU: This, briefly speaking, is the legal position. I have gone into the legal position because I suggested that an inquiry was necessary and I had to make out a case for an inquiry. So far as these Ordinances are concerned, as I said, the special Courts have been vested with very large powers indeed. I am not objecting to the procedural side of the Ordinances. You may retain the procedure, if you like, as it is. What I do say is: do not take away the revisional and appellate jurisdiction of the High Court. As a matter of fact, I cannot understand what need there was for the Special Criminal Courts Ordinance. I find, Sir, that there is the Defence of India Act. Under that Act we have provisions for Special Tribunals. The constitution of the Special Tribunals is provided for in sections 8, 9, 10, 11, 12 and 13 of the Defence of India Act. If you read Chapter III, you will find the constitution of these Special Tribunals given. The merit so far as these tribunals are concerned is that you have three persons instead of one acting as judges, and the right of appeal to the High Court in a certain class of cases is not entirely barred under section 13. Therefore, Sir, I should have thought that, having regard to the fact that there exist on the Statute-book provisions which give Government power to try in an expeditious manner cases of a serious character involving the safety of the realm and the safety of the State, there was no need for a Special Criminal Courts Ordinance. I should have thought that the executive was amply provided with powers already under the Defence of India Act, 1939. That Act was passed by the Legislature. It may be said that it is costly to have three judges. Well, it is not costly for you to have a Food Controller, and to have five British A. R. P. officers in the United Provinces for fire work. It is costly for you to have three judges for trying men charged with the most serious offences with which any man can be charged. All that I can say is that, if that is the answer, then the Government of India is, as we know it to be, without any conscience whatever. Sir Ramunni Menon, who has spent all his life in Government service and therefore has imbibed a certain mentality, laughs. But let him go and ask his countrymen what they think of this British Government and he will be amazed at the horror with which the acts of this Government in certain parts of my province are regarded by the people of the province. It is all right to talk of violence. We all condemn violence. But there is the other side of the picture also and we Indians can never forget that other side of the picture. Therefore, it is a very modest request that we make. I am not saying, "Do away with all special legislation". That is not the line that I have taken. I have recognised honestly, frankly, truthfully, that there is need for special legislation. But what I say is that the special legislation is here. It is to be found in the Defence of India Act of 1939, and it is for you to show that there is any case for the establishing of Special Tribunals with the powers which you have given to them. The Special Judge can sentence a man up to seven years without any appeal. One solitary individual, a man selected by the Executive Government, can sentence a man up to seven years. You have got to show that there is any special case for this sort of Tribunal, and not the sort of Tribunal that is visualized by the Defence of India Act of 1939. So far as the other Ordinance is concerned, I recognise that fifth column activity must be dealt with very severely. I have got no sympathy with fifth column activity. Mr. John Amery.

[Mr. P. N. Saprú.]

can broadcast from the German radio and Mr. Leopold Amery can remain the Secretary of State for India. Well, we are not built that way either. That is a different story altogether. What I have not been able to understand is this. Under the Ordinances you have deprived a man not only of any power of appeal or review to the High Court but you are also not going to allow the accused charged facilities for proper defence. It means it will not be open to the accused to have a Counsel of his own choice under the Ordinance. There will be a sort of panel selected by the Executive Government of Counsel and the accused will only be permitted to have a Counsel from among those who are in the panel. I asked the Honourable Sir Sultan Ahmed, who has practised all his life before British courts of law whether this sort of thing is known to English Jurisprudence at all. It may be said that this is wartime and all this is necessary in the interests of peace and order. I happen to be a student of constitutional law and I will never forget one famous case in English constitution law. I will just, before I wind up, remind the Honourable the Law Member of that case. That is the case of Woolfton. In 1793 England and France were at war. Woolfton was an Irishman. He was an Irish rebel and a real rebel. He had gone over to the French side. He became an officer in the French army. The French man-of-war in which he happened to be was captured by the British. He was tried before a British Court Martial. The Court Martial ordered him to be hanged. Then, before the Irish King's Bench Division an application for a Writ of Habeas Corpus was made. On the day on which he was going to be executed there was a Writ of Habeas Corpus made before the Irish Bench and such was the impartiality of this Bench—they must have hated the very name rebel; the rebel had gone over to the other side; he was actually an officer on the other side—they issued the Writ and he was ordered to be released. Why? Because he was not a British officer and therefore he was not subject to the jurisdiction of martial law. As a French officer, he could not be tried by a British Court Martial. That was the character of the Englishman in 1793. I do not know what the character of the Englishman who rules this country today is. But I would like him to be true to the ideals which inspired him in 1793, which inspired him in the 19th Century and which enabled him to be the first nation of the world. If he wants to maintain that position, then he must be true to his ideals. He must not follow the Nazi way, and if I may speak the truth, the truth is that association with Nazism has not changed the British also, and that is the only interpretation that I can put upon these Ordinances which go much too far, which have substituted the reign of executive discretion for the reign of law. I could go closely into these Ordinances—

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): You have exhausted your time.

THE HONOURABLE MR. P. N. SAPRU: Yes, Sir. With these words, Sir, I would suggest that the Honourable the Law Member ought to attach some importance to what we have said. It should be possible for him to provide at all events for a good appeal in all these cases. The revisional and appellate jurisdiction of the High Court should not entirely be taken away. If he is not prepared to do this, let him accept the procedure contemplated by the Defence of India Act of 1939. We shall consider that a vast improvement over the present Ordinances. This is about all that I have got to say, Sir.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West : Muhammadan): Sir, I was one of those who very strongly supported the Defence of India Act when it was put before us, and I believe that in difficult times like these, during a war of this magnitude and a war of life and death of nations, any measure which is necessary for the purpose of prosecuting the war ought to be supported. I emphasise the word "necessary". Unnecessarily ordinary laws ought not to be suspended. Unnecessarily powers should not be acquired by the executive. But where it is necessary I am quite prepared to support the Government. The condition in this country is very different to that of other countries which are involved in war. There are countries which consider this war as their war. There are other countries which support the war although it may not be their war but they willingly support and co-operate in war measures. This country is different. In this country the atmosphere is such that even those who are at the head of the Government have to move very cautiously, because the confidence of

the masses might not be smashed. As my Honourable friend Mr. Sapru said in the High Courts of India the litigants have confidence. In administering justice there are also difficulties, because the judiciary and executive are not separate institutions and one has to be very careful in giving special powers for trying cases. Certain restrictions have to be put on the powers of individuals who are executive as well as judicial officers. This Resolution asks for a thing which I am quite sure should be acceded to. It only asks for the appointment of a committee to consider, in the light of experience gained, the effect of the provisions of these Ordinances; and wherever it is found that either the power is unnecessary or the power reduces the confidence of the people in the judiciary and shakes it, without doing any damage to the interests of the war efforts, that ought to be removed. Now, the Defence of India Rules are so very wide that they practically would cover every offence under the Penal Code except matrimonial—even some of those might be included. I shall give the instance of a case which reached the Allahabad High Court. A person in the district of Meerut slaughtered a cow in an enclosed house on the morning of the Bakr-Id, where there was no order prohibiting sacrifice of the cow or any other order under section 144. He quietly did it. He quietly walked into the police station which was some miles away and there he made a report. His object was to record a report of the slaughter having been made in that village. The District Magistrate was anxious to prosecute him. He had committed no offence under the ordinary law and the District Magistrate started a case against him under the Defence of India Rules for causing disaffection between two classes of His Majesty's subjects. The Rules are very wide. Even if my Honourable friend Mr. Sapru and I happen to talk in a crowded street of this city,—he is used to talking loudly and so am I,—we may be hauled up under the Defence of India Rule, because a Hindu and a Muslim were talking so loudly that they might quarrel and a riot may occur. This is how the Defence of India Rules have been applied in certain cases and those are the cases which are triable under the Criminal Courts Ordinance. If I am to survey the various provisions of the Defence of India Rules and how they are used, it would take a very long time. But I only ask the Honourable the Law Member to consider this fact that what really is aimed at by that particular Ordinance is the expediting of trials, not anything else. Sir, fortunately I have experience of two historic trials, one which was expedited by a Special Tribunal appointed by the Governor General in the case which is known as the Katarpur Riot Case. There were three Judges, one a member of the Bar, the late Sir Ross Alston, a Judge of the High Court Mr. J. Tudball and Mr. Justice Dalal, who was then a Sessions Judge. It was a case of great magnitude which was tried by this Special Tribunal for seven months and decided. Then I have experience of another case which was tried under the ordinary procedure in which I was in charge of the entire defence and that is the case which is known as the Inter-provincial Coining Gang Case, which was tried at Allahabad. You will be surprised to hear that the accused were in jail for five years before they knew they were guilty or not. The Special Magistrate who was appointed to inquire into the case took a year and a half, from 10 A.M. to 4 P.M. every day. The trial by Special Judge took over two years. Some of the witnesses took three months in cross-examination in day-to-day hearing. The result was that several lakhs of rupees were spent by the Government on that trial. Every accused was acquitted and the Special Judge censured the method of prosecution and the procedure adopted by the Police in that case. The Government appealed and engaged a special Counsel to argue the appeal, paying him Rs. 30,000, but the High Court dismissed the appeal and confirmed the judgment. Now that is an instance of delay.

I can tell you, Sir, that I am one of those who would very much like that in these abnormal days any cases which arise out of either war conditions or internal disturbances should be tried as quickly as it is possible without doing much damage to the credit of justice and on this account I think that it is very essential, now that we have had experience of application of various Ordinances, that we should sit down and reconsider the provisions in respect of the trial and the right of appeal and I do not think that it will take an unnecessarily long time or cost much in going through the revision of the Ordinances. There will be, as has been suggested in the Resolution, a Judge and one or two men from among non-officials and men who can understand these things. You can only have one thing, namely, the Government point of view. It is not possible for you—you have no experience, you have never

[Haji Syed Muhammad Husain.]

been under these circumstances—to realise the trouble of the accused. You cannot really think of the difficulties of the accused and the defence in connection with the trials which are taking place now.

Now, especially in view of the present war conditions, I say it is very necessary and essential for the Government to have as many people as possible in the country who have confidence in British justice and try not to shake that confidence. By these methods the bitterness of the feeling enhances which ought to be avoided. In India the hour of trial has not yet come and I hope it will not come but if it does come that is the time for which you ought to consider very seriously how to act in the atmosphere which is prevailing in this country.

Now, you will see, Sir, and I hope agree with me about the procedure—well it is not a mandatory provision—whereby a Magistrate or a Judge has been given discretion that he may take down whatever notes he may like of the evidence which is tendered in the case. Now that discretion I would like to know how many times has been exercised in favour of the accused. If you examine the records of these trials you will find only the head-note, namely, the name of the witness and one or two sentences about what is said for the prosecution and against the accused, etc. Now, even if a right of appeal or revision is given what use will it be unless some sort of record is there or at least important points coming out of the evidence in cross-examination and examination in chief are recorded?

Now, Sir, I really think that it is very essential that at least the Ordinances—at least those which have been applied and practised—ought to be reviewed and the necessary amendments ought to be made.

THE HONOURABLE SIR SULTAN AHMED (Law Member): Sir, the Resolution asks for a review of the scope of the Ordinances passed by the Governor-General and further their effect on the powers of the High Court. Sir, the Honourable the Mover of the Resolution started very peacefully and I am glad to say ended peacefully, but during the intervening period—second stage—there was a crisis and he introduced warmth which was absolutely unnecessary. I feel happy, however, that on the whole his speech was moderate and, if I may respectfully say so, in some cases very reasonable.

The Honourable Haji Muhammad Husain gave his experience of certain cases in the United Provinces, with which I have not the slightest familiarity.

I welcome this Resolution for more reasons than one. Firstly, it gives me an chance of explaining to the House the real scope of the Ordinances and the necessity of their promulgation. There have, I find, been existing in this country various misconceptions which must be cleared up. But before I do so, I may point out that the Resolution as it stands will lead to no useful purpose at all. After all, under section 72 of the Government of India Act, Ninth Schedule, it is the Governor General who has been vested with the powers of promulgating Ordinances. The Legislature has nothing to do with them. The responsibility for the Ordinances vests solely and wholly in the Governor General and the Governor General is outside the ambit of this House. Therefore, what would be the position supposing an inquiry committee was constituted to go into the scope of these Ordinances and their effect on the High Courts as proposed? The Governor General will not be bound by their report at all. The Governor General has got authority to promulgate Ordinances in cases of emergency, and he is the sole judge to decide when an emergency has arisen. I do not, therefore, see the necessity of this Resolution.

Apart from the futility of the Resolution, I submit that there is no ground for objecting to these Ordinances, except because of certain misconceptions which have prevailed in this country about them. I shall deal with them later. I would at this stage only say a few words with respect to the practical proposals which have been made by Mr. Sapru.

His main aim seems to be to secure the right of appeal in cases covered by the two Ordinances referred to by him. At present these two Ordinances provide a right of review by a High Court Judge nominated by the Provincial Government. I have looked into most of these cases which have been decided on review by the High Court Judges, and, believe me and I say so as an Indian and as a lawyer, that I was immensely satisfied with the way in which these cases have been dealt with by

them. I have examined every case very carefully, because a tremendous responsibility rested on my shoulders; and I have been struck by the remarkable impartiality with which those cases have been examined by the reviewing Judges. The word "review" has been wrongly applied to the proceeding in the High Court. It is really an appeal because the review is both on facts and law. And the Judges who have taken upon themselves this responsibility of reviewing have done so with great care and anxiety. They have indeed given the benefit of various factors to the accused, realising that the conditions in the country were abnormal and therefore the extreme penalty has not been given in cases where it should not be given. Benefit has been given to the accused where he was not found to have taken a leading part or done anything so atrocious as to justify the imposition of the extreme penalty. Therefore, if you take my word, I would give you the assurance that the cases have been reviewed with the greatest care.

Sir, you know that this is a time when ordinary peace measures cannot always be applied. The necessity of giving extra powers to the executive in times of war has been recognised from time immemorial. It may be asked: Why should it become necessary to give the executive what may be called a free hand? The answer to that has been recognised by humanity for several hundreds of years. If you refer to the Roman law, you will find a maxim there which is always quoted: "Salus populi suprema est lex"—the safety of the people is the highest law: in other words, no law or legal process can be allowed to stand in the way when the safety of the people is at stake. When a country is at war, the safety of the people depends on the efficient conduct of the war. The executive authority—that is, the Government, as opposed to the Legislature—is primarily responsible for the conduct of the war; and it follows that in conducting the war the executive authority must not be hampered by law but must be in a position to invoke its aid. Moreover—and that is the principle which underlies all these emergency measures—the executive authority must be able to act quickly. And it is obvious that, in spite of the best of intentions, it takes a very long time to get a law passed through the Legislature—certainly far longer than it may be possible to afford in the crisis of war. Go to any country and you will find that this very vital principle has been recognised. In this country, in the first instance it was recognised in the rather dry and complicated form of an amendment to the Government of India Act, to which reference has just been made. That Act, as it stood before the amendment of 1939, though it recognised it as principle, it did not enable the principle to be applied with sufficient freedom. If you read cursorily some of the sections of the Government of India Act as amended by the Act of 1939, you will find that it has now been made clear that in time of war the Central Government, which is responsible for the conduct of the war, must have the last word. After the passage of the Amendment Act, the Central Legislature can make laws in respect of any subject, and those laws can give power to the executive authority in respect of any subject, either central or provincial. Co-extensive with the Central Government's power to make laws was the Governor General's power to promulgate Ordinances under section 72. I have already mentioned the necessity for quickness which is necessary on such occasions. One way of enabling the executive to move quickly and to invoke the assistance of the law quickly is to have an Act empowering it to make rules; the other is the use of the Ordinances.

I will now give very briefly the directions in which these powers have been used. Two stages in emergency legislation in this country can be distinguished. In explaining the stages, I will point out the difference between the Defence of India Act and the Ordinances, and the necessity of the Ordinance, which has been doubted by my Honourable friend the Mover of the Resolution. My Honourable friend suggested that there was no necessity for these Ordinances, because ample powers existed in the Defence of India Act and the Rules. I will show that that is not correct. The first stage was when India was not involved closely in the active operations of the war and when the chief task was to organise production and to control activities which might help the enemy directly or indirectly. The second stage was when the enemy had come close to India's borders and we had to legislate for the possibility of a direct enemy attack. The most important piece of legislation in the first stage is, of course, the Defence of India Act. A very large number

[Sir Sultan Ahmed.]

of rules, as the House knows, have been made under this Act. The control of industry and transport, the prohibition of trading with the enemy and of other forms of association with or helping the enemy, the protection of our vital resources are some of the most important matters with which the Defence of India Act and the rules thereunder deal. One of the important points with which the Defence of India Act, as you will find, did not deal was the control of man-power. That the Defence of India Act did not control at all. Two of the most important Ordinances, therefore, in this period, that is, the first period, dealt with man-power. There were a few Ordinances passed in 1939 and 1940, but after the fall of France, and the entry of Italy into the war, more Ordinances had to be promulgated, and after the entry of Japan at the end of 1941, when the menace to India became obvious a large number of Ordinances had to be promulgated. These Ordinances, speaking roughly, refer to man-power, so that people engaged in essential work should carry on, workers should be available for new kinds of work which the developing situation may require and Ordinances which were required to secure the maintenance of order behind our lines and generally in war-affected areas. The main principle underlying all these Ordinances was in accordance with the first duty of Government to protect the law-abiding citizens from outbreaks and to enable Government to act effectively. I would like to point out, at this stage, one very big difference between law-making in peace and law-making in war. In peace, there is time for leisurely examination of problems and law is to a great extent designed to regulate conditions which have already arisen. In war time, speed is essential and we have to legislate largely for conditions which may be expected to arise but have not yet arisen. Wartime legislation is, therefore, necessarily far more a matter of trial and may be of errors than peacetime legislation. The law-maker has, to some extent, to try to be a prophet and I am afraid there is no Prophecy Department in the Government of India. I can only say that no one will be more pleased than the Governor General or the Governor General in Council if some of the situations envisaged in our legislation never materialise. But Government must be, and has to be, prepared. I have stated all this simply to explain the necessity of Ordinances.

I now come to the question of the effect of these Ordinances on the powers of the High Court. Out of the 115, or say 116, Ordinances, two Ordinances have been selected by my Honourable friend Mr. Sapru, where he suggests that some modification in procedure or in other words the right of appeal is clearly indicated. As I have said before, my own personal examination of the cases which have been tried by the Special Judge and reviewed by the High Court Judge has convinced me that the greatest impartiality has been shown by them. But I also know another principle which is well recognised, and that is, it is not enough that justice is done but it is necessary that people should feel that justice has been done, and from that point of view I feel that a case has been made out by my Honourable friend for our serious consideration whether a right of appeal should or should not be provided for, that is, appeal to a High Court Judge nominated by the Chief Justice, and not by the Provincial Government. I quite see the force of that criticism and, speaking on behalf of Government, I am prepared to give this assurance to my Honourable friends that we will, after consultation with the Provincial Governments, try and find out whether any feasible procedure can be adopted, by which this grievance may be redressed. There may be cases, as has been pointed out by my Honourable friends, in which the sentence of death has not been passed, but there are shorter sentences of imprisonment. We would like to consider those cases also after consulting the Provincial Governments. Let me tell you, as reference has been made times out of number to the Indian members of the Government that the Indian members of the Government have got as much sense of duty as you have and in the discharge of their duties they always place their conscience and their God before them. They are not afraid of legitimate criticisms. They welcome these criticisms, and when any matter is brought to their notice—for, after all, they are ordinary human beings, and they may not notice everything—when anything is brought to their notice where perhaps a remedy is really required, they will not fail in their duty. They will do their best to remedy the grievances of the people. I again want to suggest to my Honourable Mr. Sapru to read the Defence of India Act,

carefully, and he will find out that the cases which are covered by the Ordinances really are not covered by the Defence of India Act.

With these remarks, Sir, I hope that my Honourable friend will be satisfied and will not press this Resolution. So far as the inquiry by lawyers and judges is concerned, Government are bound to oppose it. It would be futile, it would be a waste of time and it would be a waste of energy to have such an inquiry.

(At this stage, some Honourable Members suggested adjournment of the Council for Lunch.)

THE HONOURABLE SIR SULTAN AHMED: I have to go to the other House, Sir. If I am required there, I will be absent from this House after Lunch).

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

The Council re-assembled¹ after Lunch at Half Past Two of the Clock, the Honourable the Chairman (the Honourable Sir David Devadoss), in the Chair.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan): Mr. President, I am sorry that the Honourable the Law Member has been unable to be present here, but I should like to say with regard to his speech that it was a conciliatory one. He has accepted the principle underlying the Resolution of my Honourable friend Mr. Sapru. But there are one or two points that I should still like to draw his attention to. One of them is this. My attention has been drawn to cases of an ordinary character which have been brought under Ordinance No. II of 1942 which is one of the Ordinances the operation of which was discussed by Mr. Sapru. Sir Sultan Ahmed promised to consult Local Governments on two points, the practicability of providing an appeal to the High Court and also of lowering the limits of punishment entitling an accused to appeal to the High Court. But I hope that when he looks into the matter, he will also consider the desirability of making it clear on the face of the Ordinance that only those people are to be tried in accordance with the special procedure laid down in it who have been guilty of taking part in or having been connected with the disturbances that began in August. Cases of an ordinary character should not be tried under this Ordinance.

Sir, while the Honourable the Law Member dealt with the two points that I have already referred to, he did not say anything with regard to Ordinance No. I of 1943 which deprives the accused of the right of choosing his own counsel. I know that this Ordinance deals with enemy agents; but since Government do not propose to deal with them by executive order and want to give them a fair trial, it is also necessary that they should be allowed to engage any lawyer in whom they have confidence. I personally do not see why any accused person should be compelled to choose his Counsel from a panel of advocates maintained by the Central Government. Sir Sultan Ahmed was absolutely silent on that point. I personally do not think anything can be gained by placing such a restriction on the accused. I hope, therefore, that when the Ordinances that have been dealt with by Mr. Sapru are reviewed by Government they will bear this point also in mind and remove the restrictions that I have just referred to.

Sir, there is just one other point that I should like to deal with before I sit down. The Honourable the Law Member promised to bring to the notice of the Local Governments and to consult them regarding the desirability of giving the High Courts greater powers than they possess under Ordinance II of 1942. Now, when the Ordinances were made, were the Local Governments consulted? If they were made to deal with an emergency, in all probability the Central Government passed the Ordinances without consulting the Local Governments. If they feel now that a case has been made out for the revision of the Ordinances, why is it necessary for them to consult the provinces when modifying them? Why should the Governments which were not consulted before the promulgation of the Ordinances be consulted in regard to any changes that may be desirable to make in them? It is not my intention to make any debating point against Government. It seems to me that this is a very important point. There are 11 Local Governments and it might be impossible to secure unanimity in regard to any point among them. The Government of India should therefore in a matter of such vital importance take the decision in their own hands. They have been too prone to rely on the Provincial Governments, they have been too reluctant to deal

[Pandit Hirday Nath Kunzru.]

even with matters which are completely under their control without paying undue deference to the views of the Local Governments.

These, Sir, are all the points that I wish to bring to the notice of Government and I hope that when they look into the Ordinances and consider how they should be modified, they will bear these additional points also in mind.

THE HONOURABLE MR. P. N. SAPRU : Mr. Chairman, I am sorry that the Honourable the Law Member is not here for I wanted to ask him one or two questions. I recognise that on the whole his reply was of a conciliatory nature but there are just two or three points on which I should like to be clear in my mind before I indicate what my attitude towards his suggestion is.

First of all, the Honourable the Law Member said that he was going to bring the suggestion that the powers of the High Courts should not be entirely taken away to the notice of the Provincial Governments. He expressed sympathy with the viewpoint that the powers of the High Courts should not be taken away but he said that he could not act in the matter without the concurrence of the Local Governments. Now, we know as a matter of fact that there are eleven Local Governments and we do not know what the attitude of all or any of these Local Governments might be. The question which I raised is one of broad principle on which the Central Government ought to be able to form an opinion independently of what any Local Government might or might not think. The Honourable the Law Member said that he was satisfied that the Review Judges had done their work satisfactorily. I did not say in my speech that the Review Judges had not done their work satisfactorily. In our province, the Review Judge happens to be Mr. Justice Ismail and I have no doubt that he does his work conscientiously. He is a man of ability and reputation as a High Court Judge, but the point is not whether the Review Judge does his work satisfactorily or not ; the point is that the Review Judge is appointed by the executive Government. The constitution of Benches is a matter under the Letters Patent which rests exclusively with the Chief Justice and if you take away the jurisdiction of the High Courts altogether you do not act fairly by the Review Judge himself. You appoint a man of the status of a High Court Judge but he gets associated somehow or other, because he has been appointed by the executive Government, in the public mind with the executive. As the Chief Justice is empowered to constitute a Bench why not allow him to appoint a Review Judge also in the normal course ?

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official) : The Chief Justice is consulted before a Review Judge is appointed.

THE HONOURABLE MR. P. N. SAPRU : It places even the Chief Justice in a very awkward position. It is derogatory to the position of the High Court. Why not, therefore, since you admit that there must be a Review Judge of the status of a High Court Judge, let the High Court itself select a Review Judge as is done in normal cases ?

THE HONOURABLE SIR A. P. PATRO : This is not normal ; it is abnormal.

THE HONOURABLE MR. P. N. SAPRU : I mean you have admitted the principle that review is necessary and you have further admitted the principle that review is necessary by a High Court Judge. Therefore, I should say that the Review Judge should be a person selected by the Chief Justice in the ordinary way. The constitution of Benches under the Letters Patent is a matter for the Chief Justice and if you take away this power of the High Court then in a way you cast a reflection upon the highest Court of Appeal and the Review Judge for that reason, howsoever honest and conscientious he may be, does not inspire the same confidence in the public mind as he would have if he were acting as a High Court Judge. Therefore, I would say, Sir, that the Resolution raises a question of principle and it should be decided by the Government of India irrespective of what the Provincial Governments might or might not say. As a matter of fact we do not know why the Provincial Governments are to be consulted because there seems no reason why they should be consulted for a change of this character.

Another point, Sir, which I wanted to emphasise was this. It is true that you have these cases examined by a Review Judge but my Honourable friend the Law Member knows that transportation cases and death cases are triable by a Bench. Here you have only one Judge reviewing death cases and transportation cases. Further, he must have noticed that there is no appeal provided for cases in which the

punishment is less than seven years. Well, a seven years' limit too is a very high limit. As I have said I recognise the conciliatory character of the Law Member's speech. There is no divergence of principle between him and me on this point. He appreciates my view point and I believe he is jealous of the reputation of the High Courts and I think he is also jealous of the liberty of the subject. I am glad to find that there was implicit in his speech this recognition but I should like to have a more concrete and definite assurance from him that something will be done on the lines that I have suggested. I would not like the matter to be left entirely in the hands of the Local Governments.

Then there was one question which I raised to which the Honourable the Law Member did not give any reply. That was in regard to Ordinance No. I of 1943. I pointed out that whereas the Ordinance had provided for judicial procedure it had placed certain restrictions on the choice of Counsel by the accused. The Counsel must be one selected from a panel provided by the Central Government. Now, Sir, I do not know what justification there is for a provision of this character. I mean, after all the choice of Counsel—so we lawyers have been taught to believe—is a matter for the accused.

THE HONOURABLE SIR SULTAN AHMED. On a point of explanation, Sir. I think I had better intervene. This will also be a matter which will have to be considered very seriously by us.

THE HONOURABLE MR. P. N. SAPRU : I am very glad to get that assurance and I hope you will also take into consideration the question whether the transportation cases should be tried by a Bench of two Judges or by one Judge only.

THE HONOURABLE SIR SULTAN AHMED : That we cannot do ; that is a matter for the High Court and the Chief Justice.

THE HONOURABLE MR. P. N. SAPRU : Well, Sir, I do not raise any question about the other Ordinances to which reference was made by the Honourable the Law Member. There is the Ordinance regarding the collective fines ; there is the Ordinance in regard to the enhancement of penalties. We have got our own views in regard to these Ordinances. I did not raise any question in regard to those Ordinances because they do not affect the position of the High Court. My Resolution was a limited one ; I raised the question in regard to those Ordinances which affect the position of the High Court. That is why I did not travel a wider ground than I actually did in my opening speech.

Sir, in view of the assurances that the Law Member has given, I will for the time being—I say for the time being, because I may have to revert to this question in some form or other if I find that no action has been taken—I will for the time being ask leave of the House to withdraw the Resolution.

The Resolution was, by leave of the Council, withdrawn.

RESOLUTION *RE* FOODSTUFFS.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Sir, before the Honourable Pandit Kunzru moves his Resolution, may I ask the Honourable the Leader of the House, through you, what has happened to our request made at the last meeting that a day or two be set apart for discussing food questions ? We had requested the Honourable the Leader of the House to set apart one or two days for discussing the food resolutions.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : May I suggest that we should discuss not only the food situation but also the situation in regard to all essential commodities like fuel, cloth, and so on. We have had a discussion about food, but we should like a day to be given to us for discussing all these questions, including that of small coin—which is very difficult to get in Delhi.

THE HONOURABLE SIR MAHOMED USMAN (Leader of the House) : Sir, the other day my Honourable friend Mr. Hossain Imam raised two questions. He said he wanted a day to be set apart to discuss Defence questions—matters relating to the war. I have consulted the Honourable General Sir Alan Hartley, and Government are not in favour of matters connected with the war being discussed even in a secret session. The Honourable Mr. Hossain Imam did not say anything about fuel the other day. All that he wanted was that another day should be set apart for discussing the food situation. The President then remarked that we had

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some Resolutions on the subject. We have already discussed one of them. We shall be discussing the question again on other occasions as well. There is therefore no necessity of discussing the question of food supplies in a special day. The reason why the Assembly had allotted separate days for it—I was present then—was that as there was an Adjournment the Member in charge said that he would set apart two days for discussion. But here you are going to have a regular discussion on Resolutions, and there is no reason why an additional day should be set apart.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): Not merely the food situation: I suppose the Honourable Member's object is that the discussion should cover coal and other articles of daily necessity.

THE HONOURABLE SIR MAHOMED USMAN: In that case, some other Honourable Member may suggest a suitable amendment to the Resolution to be moved by my Honourable friend Mr. Hossain Imam, so as to cover other articles besides foodstuffs. That will give a splendid opportunity for Honourable Members to discuss the situation in regard not only to foodstuffs but other articles as well.

THE HONOURABLE MR. P. N. SAPRU: Can we table an amendment now? We have not got the full agenda.

THE HONOURABLE MR. HOSSAIN IMAM: You, Sir, have the power to waive the usual time limit in respect of notice of amendments. May I suggest that I should be permitted to move my Resolution today, and that discussion on it should be postponed to the next non-official day? In that case it will be possible for Honourable Members to give notice of amendments and thereby bring all the items of essential supplies for discussion on my Resolution. I think the Government will have no objection to this course.

THE HONOURABLE SIR MAHOMED USMAN: I have no objection, if it is a non-official day.

THE HONOURABLE MR. HOSSAIN IMAM: Today is the 24th of February. The next non-official day is the 2nd of March. If I am permitted to move my Resolution today and discussion on it is postponed to the 2nd of March, it will be possible to table amendments.

THE HONOURABLE MR. P. N. SAPRU: The Honourable Member may be permitted to move his Resolution and then notices of amendments may be admitted, and the Resolution may be discussed on the 2nd of March. In that case some of us will accommodate him by giving preference to him over our Resolutions.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): The only difficulty seems to be whether you can dispose of two Resolutions.

THE HONOURABLE MR. P. N. SAPRU: We have just had two Resolutions.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): Is it the wish of the House that the Honourable Mr. Hossain Imam should be allowed to move his Resolution today and that discussion on it should be taken up on the next non-official day?

HONOURABLE MEMBERS: Yes.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): The Honourable Member may move his Resolution, but there will be no speech on it today.

THE HONOURABLE MR. HOSSAIN IMAM: Sir, I move:—

"Whereas Government has failed to secure satisfactory distribution and control of prices of the necessities of life specially of foodstuffs; this Council recommends to the Governor General in Council to form immediately a committee of economists and representatives of parties in the Central Legislature to examine the whole subject and to suggest remedial methods, which should be implemented by Government as soon as possible."

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS): The Resolution will be taken up on the 2nd of March.

RESOLUTION *RE* VESTING OF CONTROL OVER GOVERNORS OF PROVINCES IN THE GOVERNOR GENERAL IN COUNCIL.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern: Non-Muhammadan): Mr. President, I beg to move:—

"This Council recommends to the Governor General in Council to take steps to have the Government of India Act, 1935, so amended as to vest the control over the Governors of the provinces governed under section 43 of the Act in the Governor General in Council instead of the Governor General."

Mr. President, I am inclined to think that this Resolution deals with a very important subject. It deals with a matter which concerns the welfare of six provinces. I have referred in this Resolution to the provinces governed under section 93 of the Government of India Act, 1935. These provinces, as we know, are Madras, Bombay, Bihar, the United Provinces, the Central Provinces and the North West Frontier Province. The total population of India, excluding the States, is about 296 millions, and the population of the six provinces that I have just mentioned is over 181 millions. It is thus clear that this Resolution deals with about two-thirds of the population of British India. The total revenue of these provinces amounts to Rs. 60 crores. Provinces of such magnitude and importance are at present under the control of Governors, whose actions can be controlled only by the Governor General. Section 93 which is referred to in the Resolution refers to those provinces where the government of the province is not being carried on in accordance with the provisions of the Government of India Act, 1935. Sub-section (5) of this section says :—

“ The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor General in his discretion ”.

As every action taken by a Governor in his discretion is subject to the control of the Governor General, it is clear that under sub-section (5) of section 93 of the
3 P.M. Government of India Act, 1935, the Governors of those provinces where the ordinary machinery of Government has broken down are subject to the control of the Governor General only.

Sir, in order to understand fully the importance of this point, we must take our minds back to the year 1833, when the Charter Act provided that the superintendence, direction and control of the entire civil and military government of all the territories and revenues belonging to the East India Company should be vested in the Governor General in Council. This provision, with slight modifications, continued to be in force for nearly 100 years. Section 33 of the Government of India Act practically reproduces the provision in the Charter Act of 1833. It says :—

“ Subject to the provisions of this Act and rules made thereunder, the superintendence, direction and control of the civil and military government of India is vested in the Governor General in Council who is required to pay due obedience to all such orders as he may receive from the Secretary of State ”.

We all know, Sir, the constitutional reforms that were introduced in India in the year 1921. Certain subjects were then transferred in the provinces to the Ministers and certain other subjects, called reserved subjects, continued to be under the Governor in Council. In respect of the latter subjects the Provincial Government continued to be under the control of the Governor General in Council. This state of things continued, I believe, till Part III of the Government of India Act, 1935, which relates to the provinces, was brought into force. When that part of the Act was acted upon, it was provided that should the government of a province not be carried on in accordance with the provisions laid down in the Act of 1935, the Governor should have power to do all such things as are necessary to carry on the government of the province, and while the emergency compelling him to assume all the powers of Government lasted, he would be under the control of the Governor General only and not the Governor General in Council. It is easy to understand the reason for the change that was made in respect of the control to be exercised over the Governors of the provinces after the introduction of what is popularly called Provincial Autonomy. The ordinary machinery of Government can fail to function in a province only when there is a conflict between the Ministry and the Governor. Now, the Ministry derives its power, from the electorate, while the Governor is responsible to the Crown. It was obvious, therefore, that when there was a conflict between the Ministry and the Governor, the control over the Governor should be exercised not by the Federal Ministry which would owe its position to the electorate like the Provincial Ministry but by the Governor General who, like the Governor, would be subject to the control of the Crown. If trouble arises in a province owing to a conflict between the will of the people and the will of the Crown, it is obvious that the officer giving effect to the will of the Crown cannot be placed under the control of a Ministry which might itself be opposed to the position taken up by the Crown. It was thus necessary that

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the control over the Governor in the cases to which I have referred should be exercised by the Governor General. But we know that Federation has not come into existence yet and that consequently there is no Federal Ministry at the present time. The Executive Council of the Viceroy still continues to function. This Executive Council is as much subject to the control of the Crown as the Governor General himself. It is, therefore, difficult to see why, at the present time, when there is no Federal Ministry, control over the Governor of a province where there is no Ministry should be exercised by the Governor General alone and not by the Governor General in Council? No conflict of wills can arise if control over Governors in the cases to which I have referred is vested not in the Governor General but in the Governor General in Council. The matter, as I have said, Sir, is a very important one. In a pamphlet known as *Fifty Facts about India* which the British Ministry of Information is circulating in America and other countries it has been stated that the provinces in India occupy the same position as the States in the United States of America. The statement, as we know, Sir, is far from true. The British Ministry of Information has conveniently forgotten the special legislative and financial powers enjoyed by the Governor. It was not to their interests to make the situation in this respect clear to the countries where they wanted to influence public opinion; but the fact is that in the provinces where there are no Ministries and Legislatures we have been thrown back to a position which existed before the Charter Act of 1833 was passed. Such is the change that has been brought about in the position of the Governor General in Council, that the Provincial Governors, where a breakdown has occurred are virtually functioning as dictators. About 180 millions of people are being ruled over by six despots. Theoretically it is true that they are under the control of the Governor General who in his turn is subject to the control of the Secretary of State. But we know that there is great reluctance shown at the present time in interfering with the discretion of Governors. The theory of provincial autonomy is still trotted out, although provincial autonomy as it is popularly understood has ceased to exist. So long as there were Ministries, it was obvious that their discretion could not be interfered with by the Crown. But when there is no popular government in a province, to say that that province still enjoys autonomy is to do violence to words and established political ideas.

Sir, I shall give a few examples in order to show the far-reaching effect of the freedom of the Governor from the control of the Governor General in Council. Take first the question of law and order. There have recently been serious complaints from time to time regarding the administration of law and order in several provinces. Yet so long as a Governor can be controlled only by the Governor General in his discretion, we cannot move any Resolution concerning any matter in those provinces where there are no Ministries. Several complaints have been brought before this House in that connection. But they could only be referred to by the way in speeches dealing generally with the manner in which law and order are being maintained at the present time. But under the rules as I understand them we are debarred from discussing the administration of any subject in any of the section 93 provinces by means of a Resolution. Take again such a thing as the imposition of collective fines. We have legitimate grievances in regard to that subject yet we cannot call in question here either the manner in which these fines have been levied in any province or their amounts. The House will thus see that in respect of one of the most essential subjects which any civilised Government can deal with about 180 million people are being governed in a manner which it would be perfectly correct to call despotic. Take again another matter which concerns vitally the welfare of the people, the liberty of the press. Now, the restrictions imposed on newspapers formed a subject of discussion here some time ago. But whenever we asked that the Local Governments should be asked to act in a particular way we were always told that even though the suggestions made here might be acceptable to the Government of India they have no power to impose their will on the Governors. If this statement had been made only with regard to those provinces which are being governed by Ministers, I would not have quarrelled with it. But it was made really with reference to section 93 provinces. Now, this is essentially a matter of all-India importance. The liberty of the press is a matter which impinges directly and fundamentally on the freedom and welfare of the people,

and yet in a matter of this kind we are told that the Government of India is unable to intervene because the Governors of section 93 provinces are under the control of the Governor General in his discretion who may not always support the views of the Governor General in Council. It is difficult for a plain man to understand such complexities. If the Governors of section 93 provinces were at the present time placed under the control of the Governor General in Council the people and this Legislature will have a remedy which is lacking at the present time. If I am told in spite of what I have said that it was not desirable to make the change that I have asked for, I should like to know what is the method open to the people of section 93 provinces to seek a redress for their grievances? I may be told that it is not the fault of the Government that the constitution has broken down in certain provinces. If the people then want to obtain redress for their grievances it is open to them to bring pressure to bear on their representatives and compel them to act in such a way that the normal machinery of Government may begin to function again. If such an answer is given I can only regard it as a debating point. Even the Government of India and the higher authorities, however convinced they may be of the rightness of their actions, will, I hope, allow that the representatives of the people may legitimately take a view different from theirs. Now is there to be no way open to the people by which they can secure redress of their grievances so long as a conflict lasts between them and the authorities. Are they to be punished merely because there is a difference of opinion between them and the higher authorities, or is there to be any way by which they may bring their grievances to the notice of the authorities even during that period when the Government of a province is not functioning in accordance with the provisions of the Government of India Act, 1935?

Sir, there is just one more illustration that I shall give in order to show the importance of the Resolution that is now before the House. Some time ago, the policy of prohibition was approved by certain Provincial Governments. The United Provinces Ministry was one of those Ministries which approved of this policy and took steps to give effect to it. However, during the last three years the policy of prohibition has not merely been modified but has been abrogated. It has been said that prohibition failed in those districts where it was enforced, but I should like to know what are the efforts made by the United Provinces Government in order to stop those loopholes that were found in the rules and regulations that were made to enforce prohibition? Was the Governor interested only in pointing out the failure of the prohibition policy or should he have taken positive steps to remedy the defects that were found in order that the policy which had been adopted should continue to be enforced as long as it was practicable to do so. A vital change has been made in this matter and even those restrictions on the sale of liquor which were introduced by Sir C. Y. Chintamani, when he was a Minister in the United Provinces, have been done away with. So far as I can see the policy of auction, pure and simple, is in the ascendant once more. That a change of so vital a character should be made and that we should not be able to discuss it anywhere shows the unreal character of the present system of government—

THE HONOURABLE MR. HOSSAIN IMAM: Which Government? The Central or the Provincial?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Both.

THE HONOURABLE MR. HOSSAIN IMAM: Good.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU—and the serious disabilities which the Government of India Act, 1935, subjects the people of the section 93 provinces to.

Sir, I hope that the illustrations that I have given have been sufficient to convince the House that the change that I am asking the Government to make is necessary in the interests of the people. Whatever the reason for placing the Governor of a section 93 province under the control of the Governor General might have been so long as the present state of things lasts, that is so long as a Ministry responsible to the people is not brought into existence, there is no reason at all why the authority of the Governor General in Council should be reduced as seriously as it has been. His authority, Sir, has been impaired in many other ways. The Governor General cannot in council, for instance, consider questions relating to foreign policy and in regard to Indian States but I am not concerned with these matters on the present.

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occasion. What I wish to point out is that while the other limitations on the authority of the Governor General in Council might not have directly affected the welfare of the people the particular limitation which I have been discussing has vitally affected them. I hope, therefore, Sir, that if Government have any desire to maintain a constitutional form of government, they should accept my Resolution and seek an early opportunity of amending the Government of India Act, so that the Governors of section 93 provinces may be under the control not of the Governor General but of the Governor General in Council.

Sir, I move.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Mr. President, I confess I am not enthusiastic about the Resolution which has been moved by the Honourable Dr. Kunzru. When I say that I am not enthusiastic about it, I must not be understood to say that I am not supporting it, for reasons which I shall place before this Council. I am not enthusiastic about the Resolution which is before the House because I am frankly disappointed with the experiment of Indianisation of the Executive Council. I look upon this kind of Indianisation as a curse. I have come to a stage in my thought when I think that perhaps it would be better if we could have a European instead of an Indian in the Council. The European Councillor has certain loyalties. He is loyal to his Empire ; he is loyal to his country. I do not know whether, constituted as the Indian officer is, he is loyal to anyone except his own self. Therefore, this process of demoralisation of public life, which is a concomitant of Indianisation, fills me with horror so far as the future is concerned. For this reason I do not feel enthusiastic about the Resolution which the Honourable Dr. Kunzru has moved. At the same time, after reflection, I have come to the conclusion that I must, on other grounds, give this Resolution my support.

The Federation Act of 1935 was full of anomalies. It envisaged a federation with certain reservations and safeguards. Now, a federation involves a division of sovereign power. It involves a division of the functions of sovereignty. For this reason it was necessary to have three Lists. We had the Provincial List, we had the Federal List, and we had the Concurrent list. The scheme did not provide for complete responsibility at the Centre, because Defence, External Affairs and Ecclesiastical Affairs were to be under the care of the Governor General. In the case of provinces also there was an element of dualism in the scheme, because we had what was called the principle of special responsibility. The Governor was vested with certain reserve powers, to be used by him on certain specified occasions and for certain specified purposes. Therefore, since from a unitary State India had been made into a federal State ultimately controlled by Britain by the Act of 1935, it was necessary to place these special powers in the hands of the Governor General, who would remain responsible for these special powers to the British Parliament. Similarly, in regard to the provinces special responsibilities were placed in the hands of the Governor, and for these special responsibilities the Governor was to be responsible to the Governor General, who in turn, was to be responsible ultimately to the British Parliament for the exercise of these special responsibilities. There was logic in the arrangement behind the scheme. If you accept the principle of federation, if you accept the principle of responsibility, if you accept the principle of safeguards, the arrangements made in the Act of 1935 naturally and logically follow.

But the position has very much changed since the Act of 1935 was passed. The Act of 1935 itself envisaged the possibility of a constitutional breakdown in the provinces ; it envisaged the possibility of a political party refusing to work the constitution ; it foresaw the possibility of a deadlock arising over some issues between the Governor and the party in power. For that reason it provided, in its breakdown clauses, for a complete assumption of power by the Governor. Well, that breakdown occurred. I am not going into the reasons for that breakdown. I may blame the Government for that breakdown ; Government may blame us for it. But the fact is that the breakdown which was envisaged did occur. The result of that breakdown is that power completely resides now in the hands of one single individual—the Governor. The Governor, under the Act, is now responsible to the Governor General. So far, therefore, as the position in the section 93 provinces is concerned, it is this. There is at the moment no provincial autonomy functioning in the section 93 provinces.

The Provincial Legislatures in those provinces are not functioning. The Provincial Ministries are not functioning in those Provinces. There is just one official functioning; he is the Governor, and in him resides all power. Therefore, the scheme of 1935 having broken down, and three years having elapsed after the breakdown, there should be a review of the situation under the Act. Three years having elapsed and the breakdown having continued, it has become necessary to consider whether any change should be made in the relationship between the Governor and the Government of India.

Control at the moment over the Governor resides in the Governor General. He is responsible, for the maintenance of order, to the Governor General. Now, so far as the position of the Executive Council is concerned, that is regulated by the transitory provisions of the Government of India Act. The position, as I visualise it, is this. Under the old Act of 1919, the Government of India was responsible for the Indian States. The Government of India has now nothing to do with the Indian States. The Indian States are the sole responsibility of the Crown Representative. To that extent admittedly the position of the Executive Council is less important than it was before the Act of 1935. Secondly, the position of the Executive Council has further deteriorated, for the reason that the Governor General's veto over the Executive Council was, under the arrangements before 1919, of a limited character: he could veto the Executive Council only in the interests of the peace and tranquillity of the country. I have not got the exact words of the Statute before me, but a reference to Acts prior to 1919 will show that the veto of the Governor General was of a limited character. (Now the veto of the Governor General is of a more extensive character, because he can intervene where the essential interests of India are concerned. The words "essential interests" are very wide. And remember that the Governor General is the sole judge of what those essential interests are. Therefore, so far as the Governor General's Executive Council is concerned, their position is no higher than that of mere advisers. Viscount Simon was not wrong when he described the Executive Council as a body which advises the Governor General. It advises the Governor General, not in the sense that the Prime Minister advises the King—the advice of the Prime Minister is binding upon the King—but in a real advisory capacity. Therefore, the change suggested by Dr. Kunzru is of a very minor character. It does not touch the fringe of the problem. All that he asks is, "Place the Governor under the control of an advisory body with a large Indian element which experience has shown proves ineffective on critical occasions." Well, frankly, I do not look upon that as a very radical change, and I cannot be enthusiastic about that change. But there is one advantage that I see in the change that the Resolution advocates and it is only for this reason and for no other reason—because if I give any other reason I indicate my confidence in an Indianised Government of India, and I have no confidence in an Indianised Government of India—experience has shown that what you want is democratisation, not Indianisation—that I give my support to this Resolution. The reason is that it will enable the Central Legislature, which is functioning, an opportunity of discussing provincial questions. The Central Legislatures are functioning creakily but they are functioning, and we propose to see that they continue to function. We do not believe in the boycott of Legislatures and we are not going to run away from our posts. Therefore, if you make the Provincial Governments subordinate to the Governor General in Council, then it will be possible for us to put questions in regard to provincial administrations in the United Provinces, the Central Provinces, and other provinces. It will enable us to raise debates in regard to questions relating to these provinces. It will give us a forum for raising discussions on provincial subjects. The Central Legislature will provide us with a forum where we can ventilate our grievances. If the Provincial Legislatures were functioning, I should not have made that suggestion. Since the Provincial Legislatures are not functioning, I think there is force and point in Dr. Kunzru's view that the control over the Provincial Governments should be vested in the Government of India.

A word, Sir, with your permission, about these Provincial Governments. As one who lives in a section 93 province, I can say that there is not the slightest touch in these section 93 provinces between public opinion and the mighty Governors, mightier Chief Secretaries and even mightier Advisers. There is not the slightest touch

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between official India and non-official India. We live in two completely separate compartments. We talk with absolute mental reservations to each other. We have our own views of things and our own ways of looking at things, they have their own views and their own ways of looking at things. That cannot be helped when we are living under imposed systems of administration. I think that is the complaint of Dr. Kunzru and I wish it to be stated with all the bluntness of which I am capable. I do not say that all the policies which emerge out of the Secretariat are wrong. Sometimes they may be right, sometimes they may be wrong. But I do say this, that so far as I am concerned, or so far as the public man is concerned, he has no hand in shaping or formulating those policies. Reference was made to the attitude of Local Governments to law and order. Reference was made by the Honourable Dr. Kunzru to the attitude of Local Governments to the liberty of the subject and the freedom of the press. Reference can be made to the attitude of Local Governments to the question of educational policy. Reference was made by Dr. Kunzru to the question of prohibition. Now, I am not a teetotaler. I like occasionally a little drink and I think a little drink does not do me any harm. But I certainly am a believer, if not in total prohibition, certainly in active temperance. I certainly am a believer in working to the end of local option. I find, Sir, that in many provinces, not only has the experiment of prohibition in the districts been completely abandoned, but a discredited policy, which does mind people drinking to the maximum extent possible in order that the revenues of the State might increase, for which a Member of the Executive Council here was responsible in my province, has been substituted for the policy of prohibition. There was a substitute policy which is associated with the name of Sir C. Y. Chintamani. It was never considered. The policy today in our province is not one of encouraging active temperance. The policy today is of drink—drink and be merry—and let the Government revenues increase at the cost of the health, prosperity and well-being of the tiller of the soil and the worker in the factories.

Well, Sir, we know that the columns of newspapers are not available to us because anything that we write has to be censored and censorship is very strict in the country. So, there is no forum where we can ventilate our grievances. The Legislatures in the Centre, which are still creakily functioning, provide that forum for ventilating our grievances. The change which has been suggested by Dr. Kunzru will enable us to bring these provincial grievances before this august body, or will enable members of the Assembly to bring their grievances before the Central Assembly, and to that extent I must say that it will improve, to some extent, conditions as they are. I believe in speeches and I believe in writings and all that sort of thing. These are the only grounds on which I support this Resolution. I wish to make it perfectly clear that I am speaking for myself. I have no faith left in Indianisation. I have faith in democratisation. I would like to have democratic control over the machinery of Government. It does not matter to me whether you have five, six, seven or eight servile Indians.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Sir, I am in greater difficulty than my friend Mr. Saprú as far as this Resolution is concerned, because not only have I to examine this question from broad principles, but also I have to examine it from the angle of vision of my political party. I shall, therefore, Sir, subject this Resolution to double scrutiny, one as a pure and simple legislator and the other as a party man. I find that the implications of this Resolution are very wide. The first implication is that we are hopeless, that we see the writing on the wall "abandon all hopes", that there is no hope of getting any power, that we are to be satisfied with finding only a forum; after having demanded all these years Swaraj, Self-government, Dominion status, we are to be content with merely being able to put a question or to raise a debate. We do not wish to have control in our own country, not even in the provincial atmosphere. That is the first implication. The second implication is that the Governor General in Council has the confidence of the representatives of the people. At least I for one would never subscribe to this principle. I have before the expansion of this Council in 1940 stressed the

* Not corrected by the Honourable Member.

point that it is not the quantity which counts, but it is the quality which matters. A single Indian member who has the power and the ability to have his point carried is better than 11 weaklings. I personally believe that we are in great difficulties. The advantages of having Indianisation were shown only a few minutes before. A perfectly legitimate request that Indian people should be allowed to discuss their own defence situation was refused not by the Governor General or the Governor General in Council but by the Deputy Commander-in-Chief. That is the extent of the power and the function and the ability of this Executive Council to which power is to be given to dictate to the Governors. The disunion in the Executive Council are well known. How can we then ask that powers be given to a body so disunited and so irresponsible? There is not much to choose between the Governor and the Executive Council which represents nobody, which has no power, which lacks a constitutional position. I have used a strong word, Sir, but I find that the Government is ridden by bureaucracy and carried on from 6,000 miles away, now 12,000 miles *via* the Cape. Unless there is a drastic change, a change which will not only bring different people on the Treasury Benches but would have the effect of overhauling the whole rotten system of the Government of India, unless you have that, no amount of patchwork will do. My Honourable friend Mr. Sapru complained about the way in which the present-day Governors in section 93 provinces carry on. I er dorse every word of that. There are differences between us but there are many things in common between us too. We had a day of deliverance in 1939 from the Congress and I hope, if we are able to form a real, representative Government in the provinces, we will have a day of deliverance from the Governors, too. I do not find that there is very great advantage in making the Governors responsible to a body so ill-fitted to take responsibility as the present-day Government of India.

Secondly, I have to examine it from the Muslim League point of view. The Muslim League point of view has been very clearly stated right from the beginning of this war. We will have no tinkering with the constitution. The constitution is so thoroughly bad that it must be overhauled, but overhauled in consultation with and in consonance with our principles and also with the wishes of the other people living in India. I refuse, Sir, to allow anybody except myself to decide my fate and similarly my friends of the sister communities, the sister nation, have the right to decide their own fate. I wish my friends to realise the futility of continuing this internecine war. This will take us nowhere. The result will be that instead of having power in your own hands and in your own land, you will have to satisfy yourself with the liberty of being allowed to beg. This is all to which we can aspire if we remain divided as we are at the present day. As I say, Sir, the Muslim League standpoint is that there should be no tinkering with the constitution. We would agree to the formation of a real representative provisional government in the provinces as well as in the Centre if we come to terms. The League is prepared to talk on behalf of the Mussalmans and I leave it to the Congress and the Hindu Mahasabha to decide it between themselves as to who should speak on behalf of Hindu India and let us come to some terms. We could then have real power in the provinces. If, for example, the Mahasabha and the League were to come to terms we could form a Ministry in any province and if the Congress butted in and made the position impossible we could come to some sort of arrangement by means of which we could include them as well. Only then you will be justified in asking for an amendment of the Act but for a Ministry to give up provincial autonomy is, I fear, a wrong policy, and to do so in spite of the fact that the Governors are autocrats is a real blunder. We only discuss the differentiation between the different provinces. So far as the wheat question is concerned, the decontrolling of wheat is concerned you have a different policy in Bombay from what we are having in, say, Centrally Administered Areas, or for the matter of that in Bihar and the United Provinces. The provincial autonomy is not dead, but by bringing it under the Governor General in Council you might very well be accused of doing away with the provincial autonomy and substituting in its place the oligarchy of the Centre—a unitary form of government. Dr. Kunzru seems to have, unconsciously I hope, tried to forward the cause of the Mahasabha—

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: What nonsense!

THE HONOURABLE MR. HOSSAIN IMAM—because it is the demand of the Mahasabha that there should be a unitary Government and the powers that are vested in the provinces should be the least possible.

I say, Sir, that the only correct method of dealing with the situation is to have unity among ourselves. We should be able to form a real representative Government by means of the formula, which is unimprovable and no substitute to which has yet been found, that the power to nominate the Executive Councillors should rest with political organisations and if the nominees of political organisations come and occupy those seats you will have a perfect responsible Government without any impediment and without any amendment of the constitution. The force behind them, the power behind the people who will be sitting there will be so great that no Governor General, or, for the matter of that, His Majesty's Government, would dare antagonise that Government. They can easily survive the resignation of three of their colleagues and be even happy over it, but it would be a different question if those three had been the nominees of political organisations.

I venture to suggest, Sir, that the treatment which the Honourable Pandit Kunzru has suggested is not a very satisfactory treatment. It does not attempt at the source of the malady; it merely wants to mask the remedy and in place of a curative treatment we are going in for ordinary and some sort of spiritual healing. For your satisfaction you have got newspapers. You have political organisations which have not yet been banned. You can still hold public meetings in section 93 provinces. You can hold conferences.

THE HONOURABLE MR. P. N. SAPRU: No. You cannot hold meetings but you can hold conferences.

THE HONOURABLE MR. HOSSAIN IMAM: You can ventilate your grievances there. Look at the weakness of the Houses of the Central Legislature. In the Assembly they cannot carry a single thing through. We, the Elders, have always been accused of being too subservient to the Government and even those younger men who are supposed to have greater fighting qualities, even they have lost their numbers and just as we are seeing here everyday in Russia also we have the same situation. The Germans are on the retreat; they cannot make any headway against the hordes of the Russians. Similarly we cannot put up a fight against the mighty Government because they can always fill up their gaps by nominating a second man or a third man. Three vacancies on the Treasury Benches in the other House were filled up the next day. But how can we fill up the vacancies in our ranks whether they be due to intentional or a compulsory absence as has happened in this Legislature?

Well, Sir, I may repeat that the Muslim League does not approve of tinkering with the constitution and would not side with any amendment which would in any way jeopardise the *status quo* and also because of the fact that the League has no confidence in the persons or the Executive Council and is not prepared to give any additional powers to any body which does not enjoy its confidence. I therefore cannot find my way to support this Resolution.

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): The Resolution as framed presumes, or at least takes it for granted, for the sake of argument that if section 93 of the Act, as it stands at present, is not amended the control over the Provincial Governors shall vest in the Governor General and not in the Governor General in Council. I think, Sir, that the Mover of the Resolution takes it for granted that an amendment on the lines suggested by him is necessary; it is only a small amendment but of far-reaching consequences. I do not think he is able to see that large amendments or recasting of the constitution of the whole Act would be necessary. It has been promised to us definitely and we have been assured from time to time, the whole constitution will be in the melting pot after the war. After the war we have to frame our own constitution through representatives of all parties joining together. To me, therefore, it appears that to bring in this recommendation to the Governor General to suggest to Parliament to amend the Act in this small measure is a surprise, coming as it does from the President of the Servants of India Society. I should expect that he would wait for a time, and then, when all matters were to be brought in together for consideration with a view to the preparation of a constitution, this point would naturally inevitably be brought in. To my mind there is no urgency for bringing in this proposal at this stage. We know that under section 93 it is the Provincial Governors that have to act if at any time they are

satisfied that a situation has arisen in which the Government of the provinces cannot be carried on in accordance with the provisions of the Act. Section 93 says :—

“ If at any time the Governor of a province is satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion ”.

Then, in the concluding part of this section, we have the functions of the Governor. Sub-section (5) of section 93 lays down—

“ The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor General in his discretion ”.

So, under section 93 action is taken under the powers of discretion vested both in the Governor and the Governor General. The Governor General's Council is nowhere concerned in the matter of obtaining this concurrence : the concurrence is that of the Governor General only.

Then, Sir, section 54 deals with the powers of superintendence of the Governor General :—

“ In so far as the Governor of a province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section ”.

So, under section 54 power is vested in the Governor General in his discretion. The Governor General in his discretion is to exercise powers of superintendence over the Governors acting in their discretion. Sub-section (2) of section 54 says :—

“ Before giving any directions under this section, the Governor General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty ”.

Therefore, it seems to me, Sir, that while power is vested in the Governor General for purposes of general superintendence over the provinces, the Governor General is to give the Governor instructions from time to time as to how things should be carried on when the Governor is acting under section 93.

The relevant question that follows is whether it is wise that this power should be given to the Governor General and not to the Governor General in Council. That is no doubt a proposition that deserves consideration, not at this stage when we are working the constitution, but at the time when the whole Act will be in the melting pot and when all constitutional questions will come up for discussion and decision.

Now, Sir, the Honourable Mr. Hossain Imam said that the party viewpoint must also be considered. To my mind, this is a purely constitutional problem. It is not a question of this party or that party. The question is, what is the best constitution that we can frame ? While I respect the views of the League, while I respect the views of the Congress, it seems to me that in this instance we ought not to be obsessed with the creed of this party or that party. The main consideration must be, what is the best form of constitution that is suited to the genius of the people. The preliminary necessities have not been taken into consideration by our friends. People who pose themselves as leaders—leaders without any one to follow, leaders without any party, leaders without any popularity in the districts or in the *talukas*—such people may meet together. But the most essential thing is that there should be unity in the country. People of all sections must come together. They should bury their small differences, communal or otherwise, and take up the question of the constitution. I am not one of those who believe in a referendum to the people, because our country is not yet fit for that form of democracy which prevails in some parts of the world. What we now have in the country is this. There are so many sections, communities, illiteracy and ignorance, that it is necessary first that we should form a united India, so that the opinion we may formulate may not be in danger of being rejected by the British Parliament. The charge against us is that we are so divided that there is no unanimous opinion

[Sir A. P. Patro.]

expressed on behalf of the country as regards the constitution required by the country. The people are left out of account. It is said that there is no unity among us—that we do not present a united front. Therefore, it is asked, to whom is power to be transferred? Should it be transferred to the Congress; or should it be transferred to the Hindus; or should it be transferred to the Muslim League? To whom is power to be transferred? Therefore, to avoid any such questions we have first to come to some understanding among ourselves and present a united front so that we may be able to submit a scheme which has been generally agreed to.

Therefore, while I sympathise with the object of the Honourable the Mover of the Resolution, namely, that the evil in the section 93 should be minimised as much as possible by taking away power from the Governor General and transferring it to the Governor General in Council, it seems to me that it is too premature to take up constitutional amendments. We can wait. We are working the Act now; let us go through it until we have the opportunity of revising the whole of the constitution. It is certain that the constitution of 1935 is not going to remain as it is after the war. It has been promised repeatedly that things are going to be altered and changed.

In these circumstances, I think the Resolution will serve no useful purpose. We make the recommendation. It remains on paper only. No effect could be given to it at present, because it has been said that the policy is to effect no change in the constitution during the war. It seems to me a waste of time to discuss any question of amending the constitution. Let us therefore wait till the war is over. After the war an opportunity will arise for us to revise the whole constitution *de novo*. We should not tinker with the constitution by amendments of this kind.

THE HONOURABLE SIR MAHOMED USMAN (Leader of the House): Mr. Chairman, there are one or two points raised in the debate which I should like to clear up. My Honourable friend Mr. Sapru said that there was some difference in the power of the veto of the Governor General under the present constitution as compared with the previous constitution. As far as my memory goes, the veto of the Governor General—

THE HONOURABLE MR. P. N. SAPRU: I made a mistake. There is no difference between the Act of 1919 and the Act of 1935. I think there is a difference between the Act of 1909 and the Act of 1935.

THE HONOURABLE SIR MAHOMED USMAN: As far as the 1935 Act goes, the Ninth Schedule contains the same provisions as those in the 1919 Act.

THE HONOURABLE MR. P. N. SAPRU: You are quite right.

THE HONOURABLE SIR MAHOMED USMAN: As for the complaint of my Honourable friend Mr. Hossain Imam, over which he grew very eloquent, that no day has been allotted for discussing the questions regarding the war, he said that it was a demand of the House. It is not a demand of the House. It is a demand made by an individual member. He must have remembered that. There is no Resolution in which this Council has said "We request Government to allot a day for this". If every Honourable Member gets up and says a day should be allotted immediately for a particular subject, that is not possible to do. As a matter of fact I consulted the Deputy Commander-in-Chief and he said he was very busy now and what is wanted is action, not speeches, and that he is very busy at present.

THE HONOURABLE MR. P. N. SAPRU: Sir, I would also like a day. I am speaking on behalf of our Party. Our Party also would like a day for the discussion.

THE HONOURABLE SIR MAHOMED USMAN: You have lost the occasion for making the request when you walked out the other day. When the request was made you were not in the House. There is no use of your complaining now. You lost the occasion for raising the question. Now, the point is, it is an individual demand. Tomorrow, the Honourable Sir A. P. Patro may say, "Sir, I want a day to discuss the question of the future of the non-Brahmins in Southern India". Am I to allot a day for him? I was not able to convince the Honourable General Hartley that the Honourable Mr. Hossain Imam is a great expert on modern warfare. If I had been able to do so, he would have most probably agreed to it. But my Honourable friend speaks on so many occasions as if he is a great expert on every subject.

Sir, I do not want to discuss the political aspect of the question because we have seen the differences between the various Honourable Members who have already spoken. But, of course, I am glad nobody has laid a complaint at the door of the Government for the present state of affairs. Of course, I am sure that Parliament when they enacted section 93 did not think that by the most undemocratic act of a political party, the country would have been so long deprived of a popular and democratic form of government. The blame is at the door of the Congress. My Honourable friend Mr. Sapru says he is a believer in democracy. How does he justify the undemocratic act of the Congress Party when, in 1939, when the war broke out, they gave up the reins of government? All the troubles of today are due to that unfortunate act, namely, that they did not serve the country at a time of need in 1939 and resigned their jobs.

Sir, provincial autonomy is of the essence of the scheme of Federation contemplated by the Government of India Act, 1935. This means that provinces are supreme in their own field, free of the control of the Central Government and the Central Legislature. The provisions of section 93 of the Act are of an emergency nature, and the intention is that as soon as circumstances permit, normal working should be resumed. If the Honourable Member's proposal is accepted, the provinces referred to in the Resolution will be placed entirely under the control of the Central Government. Such a course would be open to two objections. Firstly, the Central Government will acquire powers of interference and control in the internal affairs of such provinces, which is against the scheme of the Act. One of the basic intentions underlying the Act is that any control exercised by the Centre over the provinces should be through the discretionary powers of the Governor General, and that such powers should be secured to the Governor General through the interaction of his own and the Governors' special powers and responsibilities. Secondly, as regards matters involving a conflict of interests between the Centre and the provinces, the provinces will be placed at a great disadvantage as the arbitral powers which are now vested in the Governor General in his discretion will be transferred to the Central Government. For these reasons, Sir, I am unable to accept this Resolution. But the Government will remain neutral as regards voting.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Mr. Chairman, my Honourable friend Sir Mahomed Usman has given the reply that was expected of him. Nobody ever thinks that the Central Government, composed as it is, will be prepared to accept any suggestion, however small, which in any way reduces the power which authorities enjoy. The Honourable Sir Mahomed Usman referred to the scheme of the Government of India Act of 1935. I hope I understand that scheme as well as he does. But what I suggested was in no way inconsistent with that scheme. That scheme provided for the establishment of a Federal Government at the Centre. When a Federal Government is established, the Governor General in Council will cease to exist. It was consequently wrong of my Honourable friend to think that if the amendment I have asked for were given effect to, the provinces would be placed completely under the authority of the Central Government. The fact is that only those provinces will be brought back under the control of the Central Government where a constitutional breakdown has occurred. The situation then will be what it was before the Government of India Act of 1935 was passed. Sir Mahomed Usman laid a great deal of stress on the importance of provincial autonomy. But it was an essential part of the scheme of the Act of 1935 to which he referred that the increased powers given to Provincial Governments should be enjoyed by those who would be subject to the control of the electorate. That was the principle underlying provincial autonomy. The Governor is not subject to the control of the Indian electorate. He is subject directly to the control of the Governor General and indirectly to the control of the British electorate. The British electorate, we know, will never exercise its control. It was said of the House of Commons by one of the British Presidents that the Indian National Congress has had that Parliament to which a great trust was committed by Providence has thrown back on Providence the charge that Providence had committed to it. If we think that the Governors are in any real sense responsible to the British electorate, we are making a serious mistake. The British electorate will, like the House of Commons, if it is saddled with this responsibility, throw back

[Pandit Hirday Nath Kunzru.]

on Providence the charge that has been entrusted to it by Providence. Real control can be exercised only by the Governor General and how reluctant the Governor General is to exercise this control is clear from the facts that I have placed before the House. I think, therefore, Sir, that the very scheme of the Act of 1935, to which Sir Mahomed Usman referred, requires that the change that I have asked for should be made in the Government of India Act, 1935. Unless you make this change, you are placing millions of people under one-man-rule. How you can justify this I cannot understand. My Honourable friend, while giving Mr. Hossain Imam the blows that he well deserved, accused the Congress of having acted in an undemocratic way. You can call the Congress undemocratic if they are doing anything contrary to the wishes of the electorate. But Government have yet to prove that the Congress Ministry had lost the confidence of the electorate and had acted in opposition to its wishes. I am afraid he forgot the fact that the authorities, though requested to order fresh elections to the Central Legislature, declined to accede to this request. Their refusal to agree to it shows that they are afraid that the Congress Ministries, whom my Honourable friend Sir Mahomed Usman called undemocratic, continue to enjoy the confidence of the electorate. I hold no brief for the Congress Party or the Congress Ministries. But we shall be deluding ourselves if we imagine that the Congress Ministries in those provinces where they resigned their offices have lost the confidence of the electorate.

Sir, I shall now pass on to the remarks made by the Honourable Sir A. P. Patro. My Honourable friend said that there was no urgency or necessity for the amendment that I had suggested and that it could be considered when the Government of India Act came to be revised. It is the most ridiculous thing that he could have said. There will be no need for considering this provision when the Government of India Act is revised. If a Government responsible to the people is established not only in the provinces but also at the Centre, a provision like this will become totally unnecessary. This measure is put forward at the present time when the Government of India Act cannot be radically altered in the manner we desire. To wait till the Government of India Act is revised is virtually to leave nearly 200 millions of people without any means of seeking redress for their grievances.

Sir, my Honourable friend Mr. Hossain Imam, as has become usual with him of late, went completely off the rails in discussing my Resolution. Half of what he said I totally failed to understand. I saw that he was in a martial mood. He was raising his voice and gesticulating vigorously, but I could not understand what he was driving at. The only thing that he seemed to me to say was that the amendment that I had asked for should not be agreed to by Government, because it would be a step in the direction of establishing a unitary Government which the Muslim League was opposed to. Even a man of his heated imagination ought I think occasionally to exercise a little reflection and to think calmly about the questions that come before this House. My Resolution does not suggest the establishment of a unitary government. It only asks that where there is no Government responsible to the people, the provincial authorities should be responsible to some other authority amenable in some degree to popular control.

THE HONOURABLE MR. HOSSAIN IMAM: Is the present Government of India amenable to popular control?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: If my Honourable friend thinks that his question is a poser, I should like to ask him why he attends the Council if he feels that no views that he can express here can ever influence the Government of India? If, however, in spite of the difficult position in which he and all other non-official members here are placed, he continues to bring forward Resolutions and express his views, why should I be supposed to be suffering from a double dose of original sin if I ask that the fate of about 200 millions of people should not depend on the will of half a dozen men? If my suggestion had been accepted by Government, there would have been no unitary government; we could not have gone back completely to the state of things that existed before the Government of India Act, 1935. The Governments of those provinces where popular ministries are functioning would not have been brought under the control of the Governor General in

Council ; and consequently it is idle, indeed extravagant, to say that my suggestion if accepted would have led to the establishment of a unitary government in India.

Sir, I know as well as my friend Mr. Sapru does the character of the present Government. I have no more faith in the present Executive Council than he has. But he recognises that there is an evil which we are faced with and for which we have to find a remedy, however inadequate it may be in the circumstances in which we are placed. My Resolution is an attempt to deal with the evil as it is in such ways as are at present open to us. I have asked for the amendment of the Government of India Act not because I think that that would lead to the establishment of a democratic Government at the Centre or because it would enable us to have more confidence in the Viceroy's Executive Council, but because it would provide us with a forum for the discussion of questions relating to those provinces where Legislatures have ceased to exist.

Sir, I cannot understand the Government opposition to my Resolution. It is all very well for my Honourable friend Sir Mahomed Usman to say that Government would remain neutral. Does he mean to say that the Government of India will accept the verdict of the elected members of this House on this question ? I am sure nothing was further from his mind than such a contingency. For him, therefore, to say when this House which is packed with nominees of Government that Government would be neutral is to indulge in a cruel mockery. He should have had more courage and said to us frankly that the Government was opposed to the amendment of the Government of India Act which I had suggested. It is, Sir, a matter of disappointment to us that the higher authorities are unwilling to exercise more control over those provinces where a constitutional breakdown has occurred. Why should they be unwilling to give us an opportunity of discussing the administration of these provinces here ? If they are not averse to a discussion of their own policies why should they prevent us from discussing affairs relating to nearly 200 million human beings who are at present living under a dictatorial form of government. Sir, the attitude of my Honourable friend Sir Mahomed Usman shows that notwithstanding the professed desire of His Majesty's Government to give freedom to India they are not prepared even to make small changes in the present law which would enable us to exercise a little more control over the Hitlerian despots who decide the fate of six provinces with a total population of nearly 180 million.

Sir, I cannot withdraw my Resolution even though Government may be opposed to it. I know the fate that it will meet with but we can give expression to our feelings only by making it plain to Government what we think of the attitude that they have adopted on this question.

THE HONOURABLE THE CHAIRMAN (SIR DAVID DEVADOSS) : Resolution moved :—

“ This Council recommends to the Governor General in Council to take steps to have the Government of India Act, 1935, so amended as to vest the control over the Governors of the provinces governed under section 93 of the Act in the Governor General in Council instead of the Governor General. ”

Question put : the Council divided :—

AYES—6.

Das, Hon. Mr. N. K.
Kunzru, Hon. Pandit Hirday Nath.
Ray Chaudhury, Hon. Mr. Kumarsankar.

Sapru, Hon. Mr. P. N.
Sobha Singh, Hon. Sardar Bahadur.
Yuveraj Datta Singh, Hon. Raja.

NOES—7.

Charanjit Singh, Hon. Raja.
Hissamuddin Bahadur, Hon. Lt.-Col. Sir.
Hossain Imam, Hon. Mr.
Khurshid Ali Khan, Hon. Nawabzada.

Menon, Hon. Sir Ramunni.
Padshah Sahib Bahadur, Hon. Saiyed
Mohamed.
Patro, Hon. Sir A. P.

The Motion was negatived.

The Council then adjourned till Half Past Five of the Clock on Saturday, the 27th February, 1943.