

LEGISLATIVE ASSEMBLY DEBATES

TUESDAY, 24th JULY, 1934.

Vol. VI—No. 6

OFFICIAL REPORT



CONTENTS.

Member Sworn.

Statements laid on the Table.

The Hindu Temple Entry Disabilities Removal Bill—Petitions laid on the Table.

The Bengal Criminal Law Amendment Supplementary (Extending) Bill—Motion to consider adopted.

SIMLA : PRINTED BY THE MANAGER
GOVERNMENT OF INDIA PRESS : 1934

Price Five Annas.

LEGISLATIVE ASSEMBLY.

Tuesday, the 24th July, 1934.

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

MEMBER SWORN.

Mr. Alan Duguid, M.L.A. (Bombay : European).

STATEMENTS LAID ON THE TABLE.

Information promised in reply to starred questions Nos. 1404 and 1405 asked by Maulvi Sayyid Murtuza Saheb Bahadur on the 14th December, 1933.

HEAD LIGHT KEEPERS AND ASSISTANT LIGHT KEEPERS.

No. 1404.

* (a) Head Light Keepers	27	{	17 Europeans, Anglo-Indians and Indian Christians. 8 Hindus. 2 Muslims.
Light Keepers	76	{	27 Europeans, Anglo-Indians and Indian Christians. 42 Hindus. 7 Muslims.
* (b) (1) Muslims	2		
(2) Other communities, other than Anglo-Indians and Indian Christians	10		
* (c) Nil.			

(d) No. particular educational qualifications have been laid down. Candidates are however expected generally to be able to read and write English, to be conversant with the mechanism of the lights and to possess some knowledge of signalling. They should also be physically fit and intelligent.

(e) The claims of some of retired Muslim Light Keepers who apply for appointment to vacancies in the Light Keepers' grade will be considered, but Government are unable to guarantee that such applicants will be given preference regardless of their suitability for the posts or of the claims of other candidates.

REPRESENTATION OF MUSLIMS IN THE GRADE OF HEAD LIGHT KEEPERS.

No. 1405.

(a) No.

(b) Muslims have been appointed to the posts of Head Light Keeper as will be seen from the reply given to part (a) of question No. 1404.

(c) The Joint Committee's recommendation to which the Honourable Member refers related specifically to the training of Indians as Inspectors of Lighthouses and expert mechanics. That recommendation was accepted by Government.

*The figures are correct upto the 31st March, 1934.

†There are no Assistant Light Keepers in the Light House Department now.

Information promised to reply given to unstarred question No. 60, asked by Mr. N. M. Joshi, on the 16th February, 1934.

SHORT TIME WORKED AND THE STAFF EMPLOYED IN THE STATE RAILWAY WORKSHOPS.

Statement showing the amount of short-time worked, the total number of staff employed and the number affected by short-time, in the various workshops on State-owned Railways.

Railway.	Workshops.	Staff employed.	Staff affected by short-time.	Short time worked.	Remarks.
Burma Railways	Locomotive Works, Insein	1,337	447	56 hours a month	Represents position as it stood during February 1934.
	Carriage and Wagon works	1,516	499	22 hours a month	
	Myitnge Signal Workshop	100	1,516	34 hours a month	
	Loco. Shops, Kanchrapara	2,173	100	34 hours a month	
E. B. Railway	Carriage and Wagon Shops	2,091	2,091	All Saturdays	Represents position as it stood during March 1934.
	Saidpur Shops	1,994	1,994		
	Dacca Shops	248	248		
	Electrical Workshops, Kanchrapara	272	272		
	Electrical Workshops, Saidpur	132	132		
	Marine Workshops	41	41		
	Belinghata Signal Shops	158	158		

E. I. Railway	Loco. Workshops, Jamalpur	8,338	427	4 days ..	..	..	Represents position as it stood during April 1934.
	Carriage and Wagon Shops, Lilloosh	6,240	631	7 days	..	..	..
	Signal Workshop, Lucknow	137	130	2½ days	..	..	..
	..	..		No short time is being worked	..	..	..
	Mechanical Workshops	9,213		All Saturdays, and in addition 2 hours extra when there are 4 Saturdays in a month, normal working hours on a Saturday being 5½ hours.	..	..	..
	Electric Shops	208	208	Ditto	..	..	Represents position as it stood in March 1934.
	Clothing Factory, Petty Repair Shop (Stores) and Stores Depot, Moghalpura.	948	948	Ditto	..	..	..
	Signal Shops	471	471	All Saturdays of 5½ hours in addition one hour extra when there are 4 Saturdays in a month.	..	..	..
	Stores Depot, Karachi	260	260	Ditto	..	..	..
	Bridge Workshop	808	808	All Saturdays, hours of work on a Saturday being 9 hours.	..	..	..
	Workshops	2,131		All Saturdays, i.e., 5 hours a week	..	..	Represents position as it stood during February 1934.
	..	..		Saw Mill is closed on Friday also, making 13 hours a week short time in that shop.	..	..	..
	Electrical Workshops, Ajmer	295	295		..	..	Represents position as it stood in February 1934.
	Carriage and Wagon Shops, Ajmer	3,409	3,409	All Saturdays 4 hours each, 16 hours per month.	..	..	..
	Loco. Shops, Ajmer	4,009	598		..	..	..

L203LAD

A:

Railway.	Workshops.	Staff employed.	Staff affected by short-time.	Short time worked.	Remarks.
B. N. Railway	Engineering Workshop, Sini ..	291	291	23 hours per month ..	Represents position as it stood in February 1934.
	Locomotive, Carriage and Wagon and Electrical Workshops, Khargpur, Nagpur and Adra.	8,592	8,592	..	
	Marine Workshops, Shalimar ..	230	230	0 hours per week ..	
M. & S. M. Railway	Loco. Workshops, Perambur ..	3,109	3,109	3 hours per 48 hours a week	..
	Carriage Workshops, Perambur ..	2,325	2,325	Ditto	..
S. I. Railway	Erecting, Stripping and Copper Smith, Forge and Smithy, Saw Mill, Carriage body, Yard gang shops at Golden Rock.	*..		Half day a week *4,054 men employed in Central Work-shops at Golden Rock.	

Information promised in reply to part (c) of starred question No. 212, asked by Sardar Sant Singh on the 21st February, 1934.

RECRUITMENT OF TEMPORARY CLERKS IN THE GOVERNMENT OF INDIA OFFICES.

Statement showing the number of candidates appointed to temporary posts or vacancies (a) from the list relating to the Third Division examination held in 1932 promulgated by the Public Service Commission on the 12th July, 1932 and (b) appointed from outside that list since its promulgation.

Name of Department.	No. of candidates selected from the P. S. C.'s list. (a)	Duration of vacancies.	No. of unpassed candidates appointed. (b)	Duration of vacancies.
Legislative ..	..			..
Legislative Assembly			3	(1) 21st August, 1933 to 25th September, 1933. (2) 10th January, 1934 to 6th February, 1934. (3) 31st January, 1934 to 30th April, 1934.
Commerce.. ..	1*	25th August 1933 to date continuing.	3	(1) 1st February, 1934 to ....(continuing). (2) 16th August, 1933 to 13th November, 1933. (3) 23rd February, 1934 to 11th March, 1934.
Education, Health and Lands.	..		2	(1) 21st July, 1933 to 15th April, 1934. (2) 29th January, 1934 to 14th April, 1934.
Railway (Railway Board).	..	..	12 (6 from retrenched staff).	(1) December, 1933, 1st to 28th January, 1934, 1—14th February, 1934, 6—12th March, 1934. (2) 6—30th November, 1933, December, 1933 to March, 1934. (3) 1—22nd December, 1933, 2nd January, to 15th February, 1934. (4) December, 1933 and January 1934. (5) 1st December, 1933 to 15th February, 1934. (6) 1—11th February, 1934.

(These persons were appointed to temporary posts or vacancies lasting from less than a week to a month. The period shown is the total of continuous temporary appointment.)

Unpassed.

Name of Department.	No. of candidates selected from the P.S. C.'s list. (a)	Duration of vacancies.	No. of un- passed candidates appointed. (b)	Duration of vacancies.
Foreign and Political	..	..	5	<p>* (1) 24th July, 1933 to 3rd or 4th week of June, 1934.</p> <p>* (2) 21st September, 1933 to 3rd or 4th week of June, 1934.</p> <p>(3) 10th August, 1933 to 3rd October, 1933.</p> <p>(4) 2nd January, 1934 to 26th April, 1934.</p> <p>(5) 2nd January, 1934 to 10th March, 1934.</p> <p>*The Public Service Commission have been asked to nominate candidates for these posts.</p>
Reforms Office ..	..	..	..	....
Industries and Labour	2	Upto 31st March 1935 (at present).	4	<p>(1) and (2) up to 31st March, 1935.</p> <p>(3) Up to 25th May, 1934.</p> <p>(4) Up to 18th April, 1934.</p>
Military Finance ..	..	..	1	3 months and 9 days.

Information promised in reply to starred question No. 477, asked by Mr. A. Das on the 14th March, 1934.

PAYMENT OF SINGLE-PAYMENT STERLING POLICIES OR PREMIUMS BY INSTALLMENTS FROM PROVIDENT FUNDS.

(a) The total amount withdrawn from Government provident funds, civil and military, during the period from the 1st April, 1930, to the 30th September, 1933, for the payment of premiums on single-payment sterling insurance policies was approximately Rs. 1,24,91,000. It has been found impracticable to collect the information asked for in respect of sterling policies on which the premiums were paid in instalments since the figures are not always booked separately in the Government accounts.

(b) As the Honourable Member will have observed from the first paragraph of the circular to which he refers, the reference was to any policy in which the insurance company undertakes to pay a fixed sum at a fixed date, with a provision that should the assured die before that date, the single premium or periodical premiums paid (plus in certain types nominal interest or profits intermediately declared) would be repaid to his estate.

The reply to the second part is in the negative. 'Endowment assurance policies' and 'Pure endowment policies' are entirely different types of policies.

(c) The opinion referred to was formed as the result of the examination of the rates offered by certain British Life Offices. The rebate of income-tax was not taken into account.

(d) The circular was issued only for the reason stated in the second paragraph thereof, namely, that Government were of the opinion that the benefits guaranteed to

dependents by pure endowment policies in the event of the subscriber's death before maturity of the policy are inferior to what the Funds themselves provide.

(e) The answer to the first part is in the affirmative. The benefits of the Post Office Insurance Fund are confined to Government servants and persons of analogous position, and it is considered that the existing practice does not involve unfair competition with private insurance enterprise. The attention of the Honourable Member is invited to the reply given by the Honourable Sir Frank Noyce on the 12th September, 1933, to part (e) of Mr. Studd's starred question No. 837.

(f) The Postal Insurance Fund has only one class of endowment assurance policies and there are no separate with-profit and without-profit policies. A quinquennial examination and valuation of the Fund is made by the Government Actuary and, as a result of these examinations, a simple reversionary bonus at the rate of .8 per mensem per 1,000 rupees of the sum assured in the case of endowment assurance policies, which works out to .96 per cent. of the sum assured per annum, was distributed for the quinquennium ending the 31st March, 1927, while a simple reversionary bonus at the rate of one per mensem per 1,000 rupees, equal to 1.2 per cent. of the sum assured per annum, has just been declared for the quinquennium ending the 31st March, 1932.

The balances of the Post Office Insurance Fund are not invested in Government securities at 3½ per cent. rate of interest as presumed by the Honourable Member. They are kept with Government as 'unfunded debt' bearing interest at the rate of 3½ per cent. per annum free of income-tax. The reasons for the low rate of bonus allotted to policies of the Post Office Insurance Fund are—

- (1) the premiums charged by the Fund are based on a 3½ per cent. rate of interest which is exactly the rate at which its balances are accumulated and no profit is therefore earned from interest income, and
- (2) the provision for profit made in these premiums is comparatively lower than that made in the premiums charged by life insurance companies.

The Postal Insurance Fund was not taken into account in the calculations of Mr. Christie. The Fund does not issue any 'pure endowment policy'.

Information promised in reply to starred question No. 693, asked by Sardar Sant Singh, on the 14th April, 1934.

CONSOLIDATED ALLOWANCE TO THE TRAVELLING TICKET EXAMINERS ON THE NORTH WESTERN RAILWAY.

(a) Yes, under orders contained in Railway Board's letter No. 7195-F., dated the 24th July, 1931.

(b) Yes, under Supplementary Rule 22.

(c) and (d). No. The Government have waived recovery of the excess amounts drawn in good faith by the special Ticket Examiners on the North Western Railway.

THE HINDU TEMPLE ENTRY DISABILITIES REMOVAL BILL.

PETITIONS LAID ON THE TABLE.

Secretary of the Assembly : Sir, under Standing Order 78, I have to report that 302 petitions, as per statement laid on the table, have been received relating to the Bill to remove the disabilities of the so-called Depressed Classes in regard to entry into Hindu temples, which was introduced in the Legislative Assembly on the 24th March, 1933, by Mr. C. S. Ranga Iyer.

No. of signato- ries.	District or town.	Provinces.	No. of signato- ries.	District or town.	Provinces.
50	Darbhanga.	Bihar & Orissa.	21	Darbhanga.	Bihar & Orissa.
27	Do.	Do.	14	Do.	Do.
11	Do.	Do.	45	Do.	Do.
47	Do.	Do.	93	Do.	Do.
20	Do.	Do.	64	Do.	Do.
23	Do.	Do.	55	Do.	Do.
18	Do.	Do.	58	Do.	Do.
22	Do.	Do.	58	Do.	Do.
18	Do.	Do.	53	Do.	Do.
23	Do.	Do.	57	Do.	Do.
18	Do.	Do.	51	Do.	Do.
21	Do.	Do.	47	Do.	Do.
38	Do.	Do.	96	Do.	Do.
42	Do.	Do.	36	Do.	Do.
39	Do.	Do.	30	Do.	Do.
41	Do.	Do.	57	Do.	Do.
37	Do.	Do.	34	Do.	Do.
41	Do.	Do.	46	Do.	Do.
24	Do.	Do.	53	Do.	Do.
51	Do.	Do.	54	Do.	Do.
22	Do.	Do.	28	Do.	Do.
24	Do.	Do.	24	Do.	Do.
54	Do.	Do.	17	Do.	Do.
56	Do.	Do.	48	Do.	Do.
58	Do.	Do.	36	Do.	Do.
49	Do.	Do.	46	Do.	Do.
48	Do.	Do.	14	Do.	Do.
56	Do.	Do.	37	Do.	Do.
4	Do.	Do.	41	Do.	Do.
54	Do.	Do.	63	Do.	Do.
18	Do.	Do.	36	Do.	Do.
20	Do.	Do.	63	Do.	Do.
51	Do.	Do.	35	Do.	Do.
31	Do.	Do.	88	Do.	Do.
15	Do.	Do.	86	Do.	Do.
57	Do.	Do.	82	Do.	Do.
111	Do.	Do.	44	Do.	Do.
97	Do.	Do.	42	Do.	Do.
86	Do.	Do.	24	Do.	Do.
88	Do.	Do.	14	Do.	Do.
144	Do.	Do.	70	Do.	Do.
57	Do.	Do.	69	Do.	Do.
72	Do.	Do.	51	Do.	Do.

No. of signato- ries.	District or town.	Provinces.	No. of signato- ries.	District or town.	Provinces.
54	Darbhanga.	Bihar & Orissa.	81	Darbhanga	Bihar and Orissa.
34	Do.	Do.	51	Do.	Do.
20	Do.	Do.	60	Do.	Do.
40	Do.	Do.	63	Do.	Do.
37	Do.	Do.	65	Do.	Do.
73	Do.	Do.	30	Do.	Do.
13	Do.	Do.	75	Do.	Do.
70	Do.	Do.	76	Do.	Do.
75	Do.	Do.	63	Do.	Do.
31	Do.	Do.	50	Do.	Do.
63	Do.	Do.	66	Do.	Do.
56	Do.	Do.	66	Do.	Do.
41	Do.	Do.	74	Do.	Do.
53	Do.	Do.	90	Do.	Do.
60	Do.	Do.	100	Do.	Do.
53	Do.	Do.	87	Do.	Do.
135	Do.	Do.	79	Do.	Do.
53	Do.	Do.	94	Do.	Do.
80	Do.	Do.	88	Do.	Do.
96	Do.	Do.	105	Do.	Do.
82	Do.	Do.	83	Do.	Do.
85	Do.	Do.	70	Do.	Do.
59	Do.	Do.	100	Do.	Do.
70	Do.	Do.	92	Do.	Do.
66	Do.	Do.	93	Do.	Do.
42	Do.	Do.	84	Do.	Do.
78	Do.	Do.	40	Do.	Do.
85	Do.	Do.	80	Do.	Do.
88	Do.	Do.	102	Do.	Do.
95	Do.	Do.	96	Do.	Do.
86	Do.	Do.	53	Do.	Do.
12	Do.	Do.	63	Do.	Do.
62	Do.	Do.	44	Do.	Do.
67	Do.	Do.	54	Do.	Do.
35	Do.	Do.	55	Do.	Do.
60	Do.	Do.	68	Do.	Do.
18	Do.	Do.	22	Do.	Do.
8	Do.	Do.	40	Do.	Do.
67	Do.	Do.	59	Do.	Do.
90	Do.	Do.	94	Do.	Do.
26	Do.	Do.	27	Do.	Do.
33	Do.	Do.	36	Do.	Do.
56	Do.	Do.	30	Do.	Do.

No. of signato- ries.	District or town.	Provinces.	No. of signato- ries.	District or town.	Provinces.
53	Darbhanga.	Bihar & Orissa.	47	Darbhanga.	Bihar & Orissa.
54	Do.	Do.	36	Do.	Do.
25	Do.	Do.	10	Do.	Do.
66	Do.	Do.	34	Do.	Do.
39	Do.	Do.	31	Do.	Do.
55	Do.	Do.	42	Do.	Do.
70	Do.	Do.	23	Do.	Do.
56	Do.	Do.	92	Do.	Do.
74	Do.	Do.	36	Do.	Do.
51	Do.	Do.	60	Do.	Do.
40	Do.	Do.	22	Do.	Do.
37	Do.	Do.	84	Do.	Do.
77	Do.	Do.	109	Do.	Do.
7	Do.	Do.	18	Do.	Do.
70	Do.	Do.	81	Do.	Do.
42	Do.	Do.	107	Do.	Do.
21	Do.	Do.	10	Do.	Do.
27	Do.	Do.	41	Do.	Do.
50	Do.	Do.	24	Do.	Do.
42	Do.	Do.	23	Do.	Do.
46	Do.	Do.	60	Do.	Do.
53	Do.	Do.	48	Do.	Do.
46	Do.	Do.	85	Do.	Do.
63	Do.	Do.	88	Do.	Do.
34	Do.	Do.	71	Do.	Do.
97	Do.	Do.	60	Do.	Do.
45	Do.	Do.	154	Do.	Do.
8	Do.	Do.	89	Do.	Do.
24	Do.	Do.	67	Do.	Do.
75	Do.	Do.	54	Do.	Do.
16	Do.	Do.	31	Do.	Do.
57	Do.	Do.	52	Do.	Do.
90	Do.	Do.	66	Do.	Do.
47	Do.	Do.	76	Do.	Do.
55	Do.	Do.	15	Do.	Do.
45	Do.	Do.	11	Do.	Do.
49	Do.	Do.	20	Do.	Do.
48	Do.	Do.	56	Do.	Do.
51	Do.	Do.	70	Do.	Do.
31	Do.	Do.	70	Do.	Do.
33	Do.	Do.	30	Do.	Do.
50	Do.	Do.	40	Do.	Do.
			8	Do.	Do.

No. of signato- ries.	District or town.	Provinces.	No. of signato- ries.	District or town.	Provinces.
54	Darbhanga.	Bihar & Orissa.	14	Darbhanga.	Bihar & Orissa.
12	Do.	Do.	70	Do.	Do.
52	Do.	Do.	50	Do.	Do.
46	Do.	Do.	76	Do.	Do.
24	Do.	Do.	46	Do.	Do.
28	Do.	Do.	11	Do.	Do.
13	Do.	Do.	28	Do.	Do.
35	Do.	Do.	45	Do.	Do.
40	Do.	Do.	23	Do.	Do.
63	Do.	Do.	8	Do.	Do.
54	Do.	Do.	54	Do.	Do.
36	Do.	Do.	24	Do.	Do.
44	Do.	Do.	22	Do.	Do.
38	Do.	Do.	8	Do.	Do.
36	Do.	Do.	75	Do.	Do.
50	Do.	Do.	62	Do.	Do.
62	Do.	Do.	24	Do.	Do.
38	Do.	Do.	60	Do.	Do.
58	Do.	Do.	76	Do.	Do.
73	Do.	Do.	90	Do.	Do.
47	Do.	Do.	45	Do.	Do.
20	Do.	Do.			
33	Do.	Do.			
19	Do.	Do.			
			15,504	Grand Total.	

THE BENGAL CRIMINAL LAW AMENDMENT SUPPLEMENTARY (EXTENDING) BILL.

Mr. President (The Honourable Sir Shanmukham Chetty) : The House will now resume further consideration of the Bill to extend the operation of the Bengal Criminal Law Amendment (Supplementary) Act.

Mr. K. C. Neogy (Dacca Division : Non-Muhammadian Rural) : The Honourable Member in charge began his speech yesterday by saying that the issues involved in this Bill are simple. Then he went on to develop that point and stated that we in this Bill are concerned principally with the place of detention and not the power of detention which had been provided for by the Bengal Legislature ; but, a few moments later, my Honourable friend, in pointing out the second feature of the legislation which is sought to be given a permanent life by this amendment Bill, stated that the second provision was intended to bar the powers of the High Court in regard to *Habeas Corpus*. I, therefore, maintain that my Honourable friend was not quite correct when he stated that under this Bill we were principally concerned with the question as to where the detenus were to be detained and that the issue

[Mr. K. C. Neogy.]

of detention without trial did not arise directly out of this Bill. I maintain, on the other hand, that we are asked to confirm the principle of banishment without trial of detenus who are suspected of complicity in the terrorist movement and whose guilt has not been proved before any Court of law, or any regularly constituted authority, before whom these people had any chance of making their defence. The second principle which this Bill involves is, if I may borrow the frank words that were used by the Honourable Sir Brojendra Mitter on a similar occasion before, the substitution of executive judgment in place of judicial judgment as a permanent feature of the law of this land. Now, Sir, the Honourable Member in charge stated that the Bengal Legislative Council having made permanent the provisions of their Act of 1930, our Act VIII of 1932, which was passed as a consequential measure, has necessarily to be made permanent. And, following this cue, my Honourable friend, Mr. Ghuznavi, stated that this Bill is a mere logical corollary, a mere consequential amendment of a Bengal Act which has been recently passed.

Now, Sir, assuming that the principle of detention without trial is accepted, does banishment necessarily follow as a logical consequence of it ? In my study of the proceedings of the Bengal Legislative Council in connection with the last measure which was passed just a few months ago, as also in connection with the measure which was passed in 1930, I do not find any indication in the official speeches there which show that banishment was in the least contemplated by the Government of Bengal or that Deoli was even then in contemplation. As a matter of fact, I find that some Bengal Members complained afterwards when Deoli had become an accomplished fact that they knew nothing about it. As a matter of fact, they said that it was only as a result of the report of the Public Accounts Committee, or the proceedings before the Public Accounts Committee in Bengal, that they came to learn that funds were being provided for the detention camp at Deoli. So far with regard to the necessary logical connection between the Bengal Act and the present Bill. Why was Deoli wanted ? We had an elaborate explanation from the Honourable Member in charge, and his statement amounted to this in effect, that unless we provide for banishment, in the case at least of the more hardened among the suspects, their detention cannot be effected satisfactorily. "Bengal finds it difficult to keep them in effective segregation in Bengal." That is the purport of the statement of the Honourable Member. Now, Sir, I remember a similar statement was also made by his predecessor in office, when the Bill of 1932 was under discussion. But this very question was raised in the Bengal Legislative Council as well, and no earlier than the 19th March, 1934, by way of a token cut in connection with the demands for the budget grants. The following official reply was given, I am quoting from the speech by the Honourable Mr. Reid on that occasion :

"There was a great congestion in Bengal, and we could not accommodate further detenus here."

That is what he puts in the forefront. The first and foremost reason for Deoli was that there was a great congestion in Bengal and they could not accommodate further detenus there ; that is one reason why it was

started. I dare say that if that reason was a valid reason in the year 1932, when the Civil Disobedience Movement was at its height and the jails in Bengal were chokeful of Civil Disobedience prisoners, that reason no longer holds good today. Now, I will let the Honourable Mr. Reid proceed with his statement. The second reason was this :

“ These men whom we have in the detention camp are all men who are deep in the terrorist movement. To remove them outside the Province does make a difference both to conditions here and also to their own mentality.”

We do not find anything here specifically stated with regard to the communications by detenus being more feasible from detention camps with the outside world, if they are to be kept in Bengal, and a new element has been introduced here to which I should like to draw the attention of the House once more :

“ To remove them outside the Province does make a difference both to conditions here and also to their own mentality.”

This element of the effect of banishment on the mentality of political suspects has never before been mentioned in this House, as far as I am aware. To put it in a nutshell, the position of the Government of Bengal is that these terrorist suspects should be terrorized out of terrorism. Sir, English is not my mother-tongue, but I should like to ask my Honourable friend, the Member in charge, as to what exactly is meant by the expected “ difference to the mentality ” of these people which is looked forward to as a result of their banishment. I know that the Honourable Member in charge has always assumed that these suspects are as good or as bad as confirmed terrorists against whom definite charges have virtually been proved. But here comes in a fundamental difference in the outlook of this side of the House and that ; and that is that, so long as these people are not placed before any properly constituted authority where they may have proper chances of putting in their defence, so long as they have not any chance of clearing themselves, public opinion will not easily take these suspects to be confirmed terrorists. which, I take it, is the case of the Honourable Member. Now, with regard to the question of the investigation which takes place, before orders of internment or detention are passed I took the occasion to look up the Rowlatt Committee Report and I should very much like to place one paragraph of that report which today sounds so very liberal in its recommendations. I would draw the attention of the Honourable Member in charge to paragraph 191 of that report where the Committee contemplated “ an investigation authority ” :

“ An investigating authority or authorities should be constituted, as to which we shall say more later on.”

Then they go on to deal with the duty of the investigating authority :

“ The duty of the investigating authority will be to inquire *in camera* upon any materials which they may think fit and without being bound by rules of evidence. They would send for the person and tell him what is alleged against him and investigate the matter as fairly and adequately as possible in the manner of a domestic tribunal. It would not be necessary to disclose the sources of information, if that would be objectionable from the point of view of other persons. No advocates would be allowed on either side or witnesses formally examined, nor need the person whose case is under investigation be present during all the inquiry. Should such person indicate that other persons or any other inquiries may throw light on the matter from his point of view, the investigating authority would endeavour to test the suggestion if it seems relevant and reasonable. At the close of the inquiry the investigating authority would certify their conclusion to the Local Government.”

[Mr. K. C. Neogy.]

Now, Sir, I do not know these things as well as my Honourable friend, Mr. Mitra, does, and I am assured on his authority that this particular recommendation, even of the Rowlatt Committee, has not been followed in practice and that the facilities and the opportunities which even that Committee contemplated that these suspects should be given have been denied to them for the past so many years. Then, to come to the question of the composition of the authority, here again I would like to read out just a few sentences from the Rowlatt Committee Report, viz., paragraph 193 :

“ If the functions of the investigating authority are such as we have described, the difficulty of its composition is minimized. For an inquiry in a judicial spirit into facts, knowledge and experience are the requisites. It has been suggested to us that the judicial, the executive and the non-official elements should be represented upon the body or bodies in question. Having indicated the functions which we recommend for the investigating authority, we do not feel that we are driven to give our views as to its exact composition. But we think we may say, as based upon the experience gained in the course of our labours, that one member should be a non-official Indian selected for his knowledge of the people.”

I should like to know from my Honourable friend as to the reasons why Government have departed from the recommendations of such an eminent authority as the Rowlatt Committee, both in regard to the question of the personnel of the investigating authority and its powers and procedure. As I have said before, Indian public opinion will refuse to accept the executive judgment in these cases as conclusive.

Now, Sir, my Honourable friend, in the course of his speech, stated that this measure alone would not end terrorism, and then he referred with appreciation to the fact that public opinion has been actively ranging itself against the menace of terrorism in Bengal. Was that the only other thing necessary, I ask ? My Honourable friend left me in some doubt, because he did not mention any other thing that might be necessary,—any other action that might be necessary for the purpose of stamping out this menace from this land ; and it was only when my Honourable friend, Mr. Mitra, was speaking that the Honourable gentleman interjected an observation to suggest that there were other steps to be taken, but that these were being considered by the Government of Bengal.

The Honourable Sir Harry Haig (Home Member) : I think my Honourable friend will remember that, when I was referring to Sir John Anderson, I said particularly that he was endeavouring to devise other remedies.

Mr. K. C. Neogy : I am very glad my Honourable friend has explained that point. As a matter of fact, I am just going to quote a few words from a speech which His Excellency Sir John Anderson made before the Bengal Legislative Council on the 28th February, 1933. This is what he said :

“ While I claim that that experience goes to show that the outward manifestations of disorder can only be dealt with by what are called repressive measures, and that any Government that neglects or fears to employ such measures, is sealing its own doom, my Government have always realized that there are certain underlying or predisposing causes of unrest that must be removed if lasting improvement is to be achieved. It is not enough to meet force by force or to overbear lawlessness by asserting the majesty and the power of the law. An atmosphere must if possible be created in which the seeds of disorder will not readily germinate. Here, in Bengal, as any careful observer must realize, there are problems,—political.....”

and here I should like my Honourable friend, Captain Lal Chand, (I wish he were here) to listen to me—

“There are problems—political, social and economic, formidable no doubt in character, but amenable, I am sure, to treatment, given the imagination, resolution and good-will, the solution of which would in a short time change the whole aspect of affairs.”

I should have very much liked my Honourable friend, the Member in charge, to tell this House the manner in which the Government of India are trying to help the Government of Bengal in carrying out the tremendous task which His Excellency Sir John Anderson referred to and has undertaken. I very much hope that the only contribution which the Government of India are making to the solution of this problem does not consist of this measure or measures of this kind.

Now, Sir, there are very great impediments in the way of public opinion asserting itself in an effective manner so as to combat this evil, and there are very great difficulties in the way of creating a favourable atmosphere for the effective co-operation of the people and the Government for stamping out this menace from our country. One impediment is the existence of repressive measures if, as they are as a matter of fact, they are operated in a repressive manner and in an indiscriminate fashion. And the second impediment is terrorism by local officials for which there is no remedy anywhere.

Now, Sir, I should like to refer to a statement which the Honourable the Home Member laid on the table only the other day in reply to certain allegations which were made by my Honourable friend, Mr. S. C. Mitra, in the course of his speech at Delhi sometime ago. These allegations, as also the official reply, have a somewhat familiar ring about them. I was struck, when the allegations were being made by my Honourable friend at Delhi, by a strange family liking which they bore to certain incidents which I had the misfortune of witnessing with my own eyes in the distinguished company of a very distinguished friend of our present Law Member, I mean Mr. Jatindra Nath Basu, whose testimony, I dare say, he will ask his Honourable colleague, the Home Member, to accept. On that occasion—and it was about four years ago, before there had been one single terrorist outrage in the district of Midnapore—things, which I do not want to mention now, happened or used to happen as a matter of course, as a matter of routine almost; and some of us, who had gone down there, were arrested for the hardihood of having gone and witnessed the depredations that were being committed under the direct charge of the Sub-Divisional Magistrate there. And I may tell my Honourable friend, the Law Member, perhaps he knows it already, that for that offence, that is to say, for having gone to see what things were taking place, his distinguished friend, Mr. Basu, and several others, including my own humble self, were placed under immediate arrest. And, not very long after that, the Sub-Divisional Magistrate was promoted to a District Magistrateship.

Now, Sir, the countryside has been harried for the last four years, from the beginning of the second Civil Disobedience Movement, by police raids and police hooliganism. Innumerable questions have been asked here and in the Bengal Legislative Council. Allegations have been made of wanton insults to respectable people, assaults on all and sundry,—men, women and children,—and wanton destruction of property

[Mr. K. C. Neogy.]

without any discrimination whatsoever. Now, Sir, I have no desire to refer to those incidents in any great detail, but for the particular benefit of my Honourable friend, Mr. Ghuznavi, who, I am sorry, is not in the House just now, I should like to refer to certain incidents which happened in Chittagong and to which reference was made, not by any disgruntled agitator, but by a gentleman who had, not long before that, been the Divisional Commissioner of the Chittagong Division himself, I mean Khan Bahadur Maulvi Abdul Momin, who after retirement from that responsible office, became a non-official Member of the Bengal Legislative Council. On the 1st of December, as also on the 5th of December, 1932, he made specific allegations of a very serious character against the police authorities of Chittagong and he stated that the houses of about 150 Mussalmans of the Chittagong town (including the houses of very respectable persons) were searched on the 16th November, 1932, that in the course of searches Muhammadan ladies were rudely treated (*Cries of "shame"*) and men were assaulted, that the *Muezzin* of a particular mosque was threatened with a bayonet and prevented from calling the *Azan*, and that this had led to a good deal of agitation among the Muslim community. Of course the usual vague answers followed denying the allegations in the usual form. This matter came up once more for discussion in the Bengal Legislative Council and Mr. Momin repeated these charges in substance. We then had Mr. Shama Prasad Mukherjee, who also spoke on that occasion, re-enforcing Mr. Momin's statements with some personal remarks of his own relating to other similar incidents that were happening in the country. I may tell this House that this Mr. Shama Prasad Mukherjee has just been thought fit by the Government of Bengal for being appointed the Vice-Chancellor of the Calcutta University. And this is what he stated :

"The report (*I am reading out from the speech of Mr. Shama Prasad Mukherjee*) which has been read out by Mr. Abdul Karim, is not, therefore, an isolated instance. Things like that have been happening in different parts of Chittagong."

Then, later on, referring to a particular case, he says :

"In this case, men were brought out of their houses and their hands were tied behind their backs and their women-folk were made to stand for hours. One of these women, who was pregnant, asked for permission to sit down but the result was that abuses were hurled at her. But the climax was reached and all these gentlemen, who were apparently respectable persons, were made to dance in a circle."

Then, he added :

"I do not know what particular amusement it offered to the officer in charge, as indeed I do not know what particular amusement would it offer to anybody in this House to see my Honourable friend and members of his department dancing round the circle, although that is an experiment worth trying."

Now, Sir, let me come to Maulvi Abdul Karim, a name which is universally respected in Bengal, a venerable old gentleman, who retired from Government service after holding the responsible appointment of an Inspector of Schools. This is what he stated. I am not going to read out all that he said. I will quote just a few lines :

"That innocent people have been harassed at times by zealous officers is perhaps too well-known to need detailed mention. It is to be regretted that either for lack of correct information or for the sake of prestige Government did not seem inclined to take such action as would put a stop to these deplorable state of things. What happened at Chittagong the other day? We have received reliable information, which we have no reason to disbelieve, that a number of innocent men and Pardanashin

women were roughly handled and greatly humiliated and the *Muezzin* of a mosque was prevented from saying the call to prayers by reason of a search for absconders."

And he stated that, as a result of the search of 150 Mussalmans' houses, not a single absconder was discovered. Then he added :

"I need hardly say (*that is how he concluded*) that regrettable occurrences such as this are causing indescribable sufferings to the people and creating an immense discontent and disaffection throughout the country. Even those who have all along been staunch loyalists are fast losing faith in Government's justice and fairness. I shudder to think what the ultimate result of all this would be. The sooner the undesirable impression prevailing in the country is removed and the people are assured not by mere words but by effective action that such deplorable incidents could not be tolerated any longer the better would it be for all concerned."

I do not think that this appeal or warning made by a man, who had served the Government all his life so loyally, produced any result.

Now, Sir, these allegations are met with the usual official denials both here and in Bengal. But, has my Honourable friend taken the trouble to enquire as to the percentage of people who put any belief in the Government communiqués that are issued on such occasions or in Government replies? If he had, he would have been struck by the tragedy that after 150 years of British rule in India official statements in such matters are presumed to be false by the people at large. It is my contention, and it is the contention of this side of the House, that terrorism is partially, nay, very largely, being fed by these acts of oppression committed by the local officials for which there does not appear to be any remedy at all either here or anywhere else. It is on this account that repressive measures are not proving as effective as they might otherwise be. My Honourable friend is leaving this high office in a few days. May I make one appeal to him that before he leaves, he may institute a committee of enquiry, consisting of High Court Judges, drawn from the different Provinces, who would tour the different parts of the country which are affected and make an open enquiry as to how far the Government policy and such acts of official terrorism are responsible for keeping alive the terrorist movement in Bengal. I dare say that if such action were to be taken by my Honourable friend, it would be seen that the responsibility for keeping alive the terrorist movement lies to a very large extent on the shoulders of the over-jealous local officials (Hear, hear) who are not being checked properly from above. And so long as they are not checked, such repressive measures would, in any event, prove to be futile. When we make complaints, we do not assume that things would have been better if India were at the present moment being governed by any other European nation. But it is no compliment to Government to say that the condition of things in India would have been worse if we were under Nazi rule. I do not think it would be any compliment to the British rule in India to say that. Poet Tagore in his own inimitable way has stated in a recent article :

"Even in times of hardest trials, I cannot own to myself that magnanimity is lacking in the English character; other Europeans in their treatment of subject peoples are less generous and more cruel than the English. The opposition that we show in word and deed against the English race and their administration is unthinkable against rulers of other races. Even had it been otherwise, the punishment would have been far less bearable, proof of which is not wanting in Europe itself or even in America. Even when we openly revolt and are punished by the officials, we complain in surprise, which only shows that even in the midst of the beatings we receive our deep respect for the English people dies hard."

[Mr. K. C. Neogy.]

I want the Honourable Member in charge to realise that they have fallen off from the great ideals that inspired the early pioneers of British rule in India. I want my Honourable friend, before he leaves the shores of the country, to do something to rehabilitate British rule in India on the old and sound foundations of justice, equity, and good conscience. It is because this particular measure is un-British in its character, it is because the policy which stands behind this measure and its likes is absolutely un-British in its character, that I must emphatically record my protest against the present Bill.

The Honourable Sir Nripendra Sircar (Law Member) : Sir, there have been so many Bengal Criminal Law Amendment Acts with their partial repeals and other supplementary Acts that it may not be altogether unprofitable to tell the House in a very few words of the exact legal situation today. We need not go back earlier than 1930. In 1930, the Bengal Criminal Law Amendment Act was introduced and passed. Put very shortly, the result of that Act among other things was, as my Honourable friend, Mr. Neogy, has pointed out, executive judgment was substituted for the judgment of Courts. That was done in 1930. I am not referring to its minor or to its detailed provisions. It enacted that where, in the opinion of the Government, something was happening, they would have the power to detain persons in jail without trial in any established Court of law. I need not refer to the details of notifications of residence, powers of search, this, that, and so on. That was done in 1930. The next thing was that, in 1932, this House passed an Act which was called the Supplementary Act, and the result of that Supplementary Act was that the Bengal prisoners could be segregated outside Bengal, and, on that occasion, the House, by its decision and by its passing that particular Act, the Supplementary Act, approved of the principle that Bengal being in difficulties with the grave menace which had appeared there, it was the duty of this House to go to her rescue and to allow the prisoners to be taken outside Bengal. That was done in 1932. Then I should remind the House that the 1932 Act, which was passed by this House (it was called the Supplementary Act), would expire sometime in 1935. The idea was that the Supplementary Act would expire with the main Act and, as matters stood in 1930, the main Act would expire in 1935, and, therefore, this House decided that it will help Bengal in her difficulties and in her distress by allowing the prisoners to be taken outside Bengal and both Acts would expire sometime in 1935, the hope being that by that time the situation would so much improve that neither the first Act nor the second Act would require to be continued or made permanent. In this state of affairs in 1934, the Bengal Council, as this House has been informed so often during the debates, passed what I may call shortly the Act of 1934. By the Act of 1934 they repealed the section in the Act of 1930 which was section 1(4) which limited the life of that Act of 1930 to five years. The result of the Act of 1934 has been that the Act of 1930 has been made permanent. In addition to that, again, I am not going into details, very drastic powers have been given to the Government, to the executive, in addition to the powers which they already had under the Act of 1930. It will be enough if I remind the House, for instance, of the provision that in the case of a man found in possession of arms, if it was proved that the possession was with the object of committing murder, then he could be sentenced to death or transportation for life. That was one of

the additional provisions of 1934. There were further additional provisions in the shape of control over literature, punishment for possessing literature of a certain kind, and so on. Therefore, the result, when the Act of 1934 was passed, was this that the Bengal Legislature, by an overwhelming majority,—a division of something like 80 to 20,—by its Act recited that it is necessary in the interest of the State to give further powers to check the activities of the terrorists. It gave powers which are very much wider than the powers which the executive enjoyed under the Act of 1930. It proceeded to repeal the section which made the previous Act only temporary, its life expiring after five years. That was the position in 1934 after the passing of that Act. At the present moment the legal situation, therefore, is this that the main Act, of which the Act of 1932 passed by this House was a supplement, is now permanently on the Statute-book. The supplemental Act which was intended to be co-extensive with the main Act is now in this position that it will expire in 1935 leaving the main Act to operate even after the Supplementary Act had come to an end. That is the exact legal situation.

Now, Sir, I shall deal with some of the points which have been raised by my Honourable friends on the opposite Benches. I do not intend to deal with all their points, but I find that one point which has been pressed by almost every Honourable Member is this, that this law is a repressive law; this law has failed in spite of all legislation; terrorism has not come to an end; so what is the object of persisting in similar legislation? We have heard similes of quacks and doctors; we had prescriptions here given by three Honourable Members widely varying from one another. May I tell the House that if they will only apply that principle to offences which are non-political, they will find out the soundness or otherwise of this reasoning. I am applying the reasoning to non-political crimes, because, in politics, even in connection with crimes, reason has but little scope, passion and prejudice succeed in overpowering reason. Now, in the case of murder or in case of dacoity, in spite of a sentence of death or transportation for life or a long term of rigorous imprisonment having been on the Statute-book at all possible times, has it put an end to murder? Has it put an end to dacoity? Is it a good argument to say that you must abolish all these punishments and say, what is the good of having any punishment prescribed against dacoity and murder if those things are still persisting? How would the argument sound, that so long as root causes of murder, such as avarice and revenge are not removed, it is useless trying to prevent murders?

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : But this Act is a preventive Act and not a punitive one.

The Honourable Sir Nripendra Sircar : I am obliged to my Honourable friend for reminding me that it is a preventive Act and not a punitive one. I take him at his word. Why do you take steps for preventing murder or dacoity, when you know all your "legislation has failed", because murder has not gone out of the land? In the case of political crimes, in dealing with terrorism, you say we should go to the root cause; until the root cause has been discovered and the thing has been uprooted, it is no good indulging in these palliatives. Why don't you do that in the case of murder?

Mr. S. C. Mitra : But you passed a law only the other day. Half a dozen laws were passed in the last four years; in what other country has the Legislature passed half a dozen laws for preventing murder?

The Honourable Sir Nripendra Sircar : In what other country has terrorism appeared in such a form within the last few years ? (*Voices : "Russia, Germany, Ireland."*) And if my friend is thinking of other countries, I do not like to talk about them, because there are countries like Germany or Italy or Russia where these measures will be considered as milk and water provisions not worth looking at. Let us not think of other countries, where there happen executions and not merely detentions without trial. I had been telling the House that Statutes for suppressing terrorism have been called repressive laws. That reminds me of the saying of a very learned Judge "that you gain nothing or lose nothing by simply adding a vituperative epithet".

Now, what is a repressive law ? I say that the case of the man who is transported for life, because he has murdered, the man who gets a sentence of imprisonment, because he has committed dacoity, and even in the case of a man in his motor car who is held up by a policeman while he is on the wrong side of the road, these are all cases of repression. Repression it must be, as, in the larger interests of the State and Society, crime has to be repressed. No one has contended, that, because, law very often is repression, therefore the amount of repression must have no bearing and no proportion to the crime which is intended to be prevented. Nor is there any issue on the question, whether the duty of the State consists solely in repressing and preventing crime. It has been conceded that the Governor of Bengal is doing all that is possible in other directions.

Mr. K. C. Neogy : But His Excellency Sir John Anderson did not dispute that these measures can be described as repressive.

The Honourable Sir Nripendra Sircar : I think I am in good company if I say that I agree with Sir John Anderson. In fact, what I have now stated is not different from his views. I am only pointing out that nothing is gained by describing legislation for preventing terrorism as "repressive". We know exactly what they mean, what they are intended for and what their effect and operation amount to. They are meant for repressing crimes, and it is the duty of this House to help the administration in repressing terrorists.

Then, Sir, in considering the present Act, we need not go into the details of what exactly has been done by the Bengal Council. What amount of "repression" is necessary in the situation which has arisen in Bengal (*Mr. K. C. Neogy : "And for all time"*), and for what time and in what manner, that has been decided by the Bengal Council by men who are most competent to decide this matter. I daresay, if my Honourable friend, Mr. Neogy, had been in the Bengal Council, he would have tried to bring about such a change in their frame of mind that, by an overwhelming majority, the Bill would have been thrown out. But, as it is, the Bill has been passed. When a Statute is said to be permanent, of course it is always subject to its being repealed. And we have been assured that the time is not very far when some people who are not in the Assembly yet will get every repressive law repealed and that their permanency will disappear within a short time if that assurance is carried out. Honourable Members should remember, that temporary Acts have failed. They only induce the terrorists to bide their time.

Now, Sir, in considering this Bill, I beg of this House to remove from its mind certain considerations which, in my humble submission, are

not relevant at all, on the sole issue which is being discussed, *viz.*, whether suspects can be detained in jails outside Bengal. For instance, the consideration that the detenu loses his liberty, that he loses the company of friends, that in some cases prompt medical attention is not given and similar complaints,—I say in all humility that these are irrelevant considerations, because they may as well happen in jails inside Bengal as outside it. If there are cases of hardship, by reason of the iniquities of subordinate staff, they may as well occur in a Bengal jail as in a jail outside Bengal. I shall have to discuss the point as to why this additional restriction should be placed upon detenus : that is a different matter ; but I am pointing out to the House, that those factors, which are common to jails, whether they are inside or whether they are outside Bengal, do not come into the picture at all in considering the desirability or otherwise of this Act.

As regards the merits of those complaints, that is a matter which is more in the province of the Honourable the Home Member than myself ; but I cannot take it for granted, because my information is otherwise, that, as a matter of fact, these political detenus are each confined in a solitary cell. My information is, that is not the fact. Solitary cell may be prescribed both in Bengal and outside Bengal as punishment for breaches of jail discipline. The normal condition of life at Deoli is that the detenus live in large airy barracks, each barrack containing from thirty to forty persons and surely that is enough company for any one, and that is the best that can be done, assuming people have to be detained. But, as I said, those details are more in the province of my colleague, the Honourable the Home Member, than myself.

I shall advert to the *Habeas Corpus* Act after I have made a passing reference to the appeals which were made to the humanity of the gentlemen who are occupying the Treasury Benches. The appeal which has been made by my Honourable friend, Mr. Mitra, and by other speakers on the opposite side—I am not making light of them, I respect them for their consideration, for their concern for others and for their feelings of humanity ; but what I do protest against and protest most strongly is the assumption that this humanity, this consideration for the misery of fellow-beings is an absolute monopoly of gentlemen who occupy the other side of this House. I beg to assure them that it is no pleasure either to the Government of Bengal or to the Government of India or to the eighty gentlemen in the Bengal Council who passed this Act, it is no pleasure to them to be compelled by overriding necessity to have recourse to a measure of this kind. It is nonsense to suppose that men like Khan Bahadur Abdul Momin, whose name was mentioned by my friend, Mr. Neogy, and others who helped in passing this Act are less sensible to the misery of others than my friends on the opposite side. It is difficult to imagine that those gentlemen would be so callous that they would not pause to consider what the effect of this legislation was going to be. I submit that any sensible man would come to the conclusion that they were impelled by the grave menace which the Province has been faced with, the extreme peril to which society has been put, to take the measures which were enacted in that Act of 1934. To them, as to all reasonable men, detention without trial must be an abomination, but they were compelled to enact an abomination to get rid of, or at any rate to prevent, a greater abomination, namely, terrorism.

[Sir Nripendra Sircar.]

Now, my friend, Mr. Lalchand Navalrai, raised some questions about the power of this House to enact a law which would interfere either with the *Habeas Corpus* Act or with any rights under the common law which the subject has. That is purely a technical question, but I would like to put it in as non-technical language as is possible. I am sorry, time of this House has to be taken up in discussing legal questions, which really do not arise. My assertion in this House is that that question is not open to argument since the year of grace 1870, and I shall, as briefly as possible, give this House an account of the history of the decisions, not only of the Calcutta High Court, but of the Judicial Committee, relating to this matter. The thing started early in 1870 when the well-known case of Amir Khan was tried in the Calcutta High Court. He had been detained under the provisions of Regulation III of 1818. He applied before Mr. Justice Norman, and his counsel—a very eminent counsel—argued that this Regulation of 1818 was beyond the competence of the Indian Legislature. It had to be conceded by the Government that by that Act the *Habeas Corpus* Act had been suspended, and the other side said that the Indian Legislature could not do that, that the subject had certain rights under the *Habeas Corpus* Act, certain rights under the unwritten law of the Constitution, and certain other rights under the common law of England, and that none of these rights could be touched by the Indian Legislature. That was the exact point which was raised in Amir Khan's case. In the original trial, Mr. Justice Norman accepted the contention to some extent, and, if I may give his exact words, he came to the conclusion that an Act passed by the Indian Legislature which was contrary to the provisions of, say, the *Magna Charta*, would be beyond the competence of the Indian Legislature; he said:

“Legislation which restricted the existing rights of an individual in a manner contrary to the provisions of, for example, the *Magna Charta*, without the special justification expressed by the maxim *salus populi suprema lex* would be beyond the power of the Indian Legislature.”

Having done that, Mr. Justice Norman went on to say:

“But, as a matter of fact, this law was not *ultra vires*, because, having regard to the conditions prevailing in this country, it was necessary for the larger interests of the State and for the society at large that some people should lose their right of going to the High Court and having matters questioned there.”

That was his position. But, unfortunately, or fortunately, whatever it is, when the matter came up to the Court of Appeal, the Court of Appeal differed from Mr. Justice Norman and it will be my endeavour to place in five or six minutes before this Assembly the facts which will show that, ever since 1870, Courts, including the Judicial Committee, on repeated occasions have accepted, not the judgment of Mr. Justice Norman, but the judgment of the Judges in Appeal. The Judicial Committee, in one of the cases, rebuked counsel and told him that he ought to remember that the judgment of Mr. Justice Norman had not been accepted. When it went to the Court of Appeal—I am trying to be as brief as possible—Mr. Justice Markby and Mr. Justice Phear thoroughly disagreed with the opinion of Mr. Justice Norman and they came to the conclusion that, apart from any application of the maxim which I have quoted—*salus populi suprema lex*—which need not be considered at all,—irrespective of that consideration, the Indian Legislature has every power to enact Bengal

Regulation III of 1818. And their Lordships said,—I will quote their exact words :

“ The Learned Counsel who appeared for Amir Khan very strenuously argued that allegiance of the subject is co-relative with protection, and where sovereign cannot protect his subjects, their allegiance ceases.”

Consequently, counsel said that Acts like Regulation III of 1818, which suspended the *Habeas Corpus* Act, and which prevented the High Court from testing the grounds on which detention had been ordered by executive authority, were illegal and *ultra vires*. Mr. Justice Phear, after pointing out that counsel was trying to convert a political sentiment into a principle of law, ended by saying :

“ Surely, a more startling proposition than this was never made to this Court and it ought never for a moment to receive its sanction.”

Mr. Justice Markby fully concurred, although he wrote a much shorter judgment, with Mr. Justice Phear, and if I may quote one passage from his judgment, he said :

“ I see no ground for supposing that an Act affects the prerogative of the Crown, because it affects the liberty of the subject. If that were so, then the Indian Legislature would have no power at all to legislate in criminal matters,—a position which would not be entertained for a moment.”

He also stated :

“ I wholly repudiate the doctrine that the allegiance of a subject to his sovereign can by any possibility be legally affected by the mere withdrawal from the subject, of any right, privilege or immunity whatsoever. I think the notion of reciprocity upon which this argument depends is one which is wholly inadmissible in any legal consideration.”

They once for all said that the mere fact that the liberty of the subject has been curtailed, that his privileges or immunities have been taken away, that the *Habeas Corpus* Act has been suspended, are no grounds for declaring an Indian Act to be *ultra vires*.

That was in 1870. I will tell the House rapidly how events have moved. Much later, about 23 years ago, before that eminent Judge, Chief Justice, Sir Lawrence Jenkins, this matter was again argued,—and I am referring to this case although there are a dozen, because in this case the matter, from the point of view of the subject, was argued with remarkable ability and strenuousness by the late Mr. C. R. Das, as the judgment itself will show. He pressed the argument of *ultra vires*, he pressed the point that the common law liberty of the subject has been taken away, he pressed the point that, under some unwritten law of the Constitution of England, the subject has the right to approach the Courts for investigating the facts upon which he was detained,—no point which could, with any reason, be argued was omitted by Mr. Das.....

Mr. B. Sitaramaraju (Ganjam *cum* Vizagapatam : Non-Muhammadan Rural) : Are you not confining to the Calcutta High Court decisions ?

The Honourable Sir Nripendra Sircar : Yes, Sir ; I am confining myself to the Calcutta High Court decisions, and I shall proceed to show that the Calcutta High Court decisions have been affirmed on at least five occasions by the Judicial Committee, but I cannot take all the cases at the same time in the same breath. The contentions of Mr. Das were over-ruled by Chief Justice Jenkins who followed Amir Khan's case, and he said that the fact that, under the common law right, assuming the subject had any common law right, and assuming that the provisions of the

[Sir Nripendra Sircar.]

Habeas Corpus Act had been suspended or abrogated, that did not mean that the Indian law was invalid, illegal or *ultra vires*. Still later,—I shall only give the House the reference,—the matter was decided by another Special Bench, again in Calcutta, of five Judges of the Calcutta High Court, and confirmed still later by Mr. Justice Carnduff. These are all Calcutta rulings,—but, before I come to the Judicial Committee, I would beg to remind the House of the fact that we are dealing with detenus in Bengal, and if in Calcutta the High Court, by their rulings, uniformly from 1870, have recognised that such an Act is not *ultra vires*, it is idle to say that some learned Judge in Bombay or Madras may have come to a different decision.....

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : Will the Honourable Member allow me to ask a question ? Does he think that if the question of *Habeas Corpus* Act comes into question in other Presidencies, it will not be legal to suspend it ?

The Honourable Sir Nripendra Sircar : Will the Honourable Member kindly repeat his question ?

Mr. Lalchand Navalrai : As the Honourable Member is restricting his remarks of the Privy Council to Calcutta, I am asking that if the *Habeas Corpus* Act is attempted to be suspended in other parts of the country, will it be legal or not.

The Honourable Sir Nripendra Sircar : I shall just....

Mr. President (The Honourable Sir Shanmukham Chetty) : Does the Chair understand that any Honourable Member has raised a point of order whether the Bill before the House is *ultra vires* of this Legislature ?

Mr. Lalchand Navalrai : Sir, no point of order has been raised, but I will raise it, because, Sir, I know of a time when such a question was raised in this House. I asked the Secretary to help me to find out the ruling, and I am trying to find out the ruling given by your predecessor who held that the Legislature has got no power in that direction. I was only waiting to raise it.

Mr. President (The Honourable Sir Shanmukham Chetty) : May the Chair understand the Honourable Member now that he formally raises the point of order that this Bill before the House is *ultra vires* of the Indian Legislature ?

Mr. Lalchand Navalrai : If the Chair will allow me to do it hereafter, when the Honourable the Law Member has finished his speech, I will do it then, otherwise I will.....

Mr. President (The Honourable Sir Shanmukham Chetty) : It seems to be an after-thought of the Honourable Member from the remarks made by the Honourable the Law Member.

Mr. Lalchand Navalrai : I did not quite follow.

The Honourable Sir Nripendra Sircar : I must say that my friend, Mr. Lalchand Navalrai, did indicate the point, because I have it in my notes that he used the words *ultra vires* in connection with any Act which would suspend the *Habeas Corpus* Act ; he did raise that point. I have no difficulty in answering the point, whether in Bombay or Madras, a similar principle which has been laid down in Amir Khan's case will be

followed. All I can say is this, that the Judicial Committee has repeatedly affirmed that an Act which abrogates the *Habeas Corpus* Act or which takes away any supposed common law rights, that will be *intra vires* of the Indian Legislature. If any learned Judge of the Bombay High Court refuses to follow the decisions of the Judicial Committee, that is a different matter. Now, Sir, about the Judicial Committee, I shall not take more than three minutes. In the case of Mrs. Annie Besant, which went up to the Judicial Committee, this principle was again affirmed, I mean the principle which was laid down in Amir Khan's case, that the supposed abrogation of the *Habeas Corpus* Act or the supposed interference with common law rights of the subject were not good grounds for attacking the Act of the Indian Legislature as being beyond its competence. I will quote only one sentence here from the judgment of the Privy Council in Besant's case. It was contended in the High Court and before this Board that it was beyond the competence of the Indian Legislature to enact section 22, and possibly even to enact the Press Act. This argument was mainly founded upon the language of Mr. Justice Norman in Amir Khan's case, and received some encouragement from the officiating Chief Justice,—that is my friend, Sir Abdur Rahim,—but Their Lordships found themselves unable to appreciate it. I think I may say with respect that the Judicial Committee was perfectly right in using the words "some encouragement", because, as I read Sir Abdur Rahim's judgment, from the point of view of the appellant it was encouraging in some parts, but extremely depressing in other parts, and, therefore, they are right in saying that there was some encouragement, but they were unable to appreciate it. This matter again came up before the Judicial Committee in appeal from a judgment of the Martial Law Commissioners of Lahore in the case known as the case of Bugga Singh and others. The argument was again attempted to be revived that the Indian Legislature has deprived the accused of the fundamental right of having his case tried by an established Court of law. Again the argument was advanced based on allegiance, common law rights, rights under the Constitution, *Habeas Corpus* Act, and every other possible matter was again pressed before the Judicial Committee. Their Lordships pointed out that counsel should have remembered that the view of Mr. Justice Norman had been thrown over by the appellate Judges. They further referred to two other cases, namely, to an unreported case of their own in the Privy Council, and also to a full bench case of the Patna High Court, all those cases affirming over and over again the principle which was laid down in Amir Khan's case. They said *inter alia*, the exact quotation being :

"It was contended that the Ordinances by depriving British subjects in India of the right to be tried by the established Courts of law affected the unwritten law of constitution whereon the allegiance of His Majesty's subjects in India depends. The law does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law."

That is what the Judicial Committee said. Their Lordships again quoted fully and approved once more the appellate judgment in Amir Khan's case. Before I leave these cases, I will finally like to read a passage from the judgment of the Judicial Committee in Bugga Singh's case :

"If their Lordships were to adopt now the argument pressed upon them (that argument being based on the infraction of common law rights, the abrogation of the *Habeas Corpus* Act and similar and allied arguments) they would be casting doubt upon a long course of legislation and judicial decisions which must be presumed to

[Sir Nripendra Sircar.]

have been known to and were in view of the Imperial Parliament when the Act of 1915 was passed."

Their Lordships then referred to various authorities with which I am not going to trouble the House, including the case of Mrs. Besant, and concluded :

"This argument cannot therefore prevail."

Shortly speaking, therefore, the position is this, that, from 1870 onwards, the Calcutta High Court consistently maintained that there is no ground for attacking legislation by the Indian Legislature on the ground of any question of allegiance or of infraction of common law rights or abrogation of the *Habeas Corpus* Act, and so on. The Judicial Committee, as I have shown, in these reported cases and also in their unreported case to which they themselves referred, have affirmed this principle. So far, therefore, the question seems to me so absolutely concluded by repeated decisions of the highest authority that there is no question of law which is now open to be argued so far as this aspect of the matter is concerned. With all respect to Mr. Navalrai, if I may say so, his points.....

Mr. Lalchand Navalrai : People know me as Lalchand Navalrai.

The Honourable Sir Nripendra Sircar : I am extremely sorry, and hope to be dealt with as a first offender. Regarding my Honourable friend, Mr. Lalchand Navalrai,—his points of law will remind Honourable Members of the House of the story of the celebrated jumping frog of Mark Twain. They may remember that the owner of that celebrated frog was always boasting of the points of that frog, the particular special point being that it could jump more than any other frog. When the challenge was taken up, his enemy had taken the precaution of putting in a decent amount of shots into the stomach of the frog, and, at the crucial moment, the frog could not jump at all. I may say about my Honourable friend, Mr. Lalchand Navalrai's points that in the stomach of his frog so many shots have been put in by the Judicial Committee and by the Calcutta High Court that it would not jump at all.

Mr. Lalchand Navalrai : I have other shots from other High Courts and other opinions.

The Honourable Sir Nripendra Sircar : I said that the legal frog would not jump. I never insinuated that my Honourable friend, Mr. Lalchand Navalrai, would not jump. (Laughter.)

Reading the debates on the last occasion, I find some points were made by my Honourable friend, Sir Abdur Rahim, and also by others. I have read them carefully and any arguments coming from my friends are entitled to be treated with great respect, and that is what I have done. If I differ from them, it is because I am entitled to my own opinion as they are entitled to theirs. One point made was this,—Why should you put in this section at all, 491, because it is not necessary. It was said, what could the High Court do when a man complained that he was being kept in detention without trial ? The High Court could only say whether a proper order under the Bengal Criminal Law Amendment Act had been passed against the particular accused. If that had been done, the High Court would have no power, no authority to test the grounds on which the executive had been moved to act in the particular matter, and upon that,

it was argued, what was the necessity of putting in this section ? Those arguments were met at length by my predecessor, Sir Brojendra Mitter, and I find, that in the end this House decided by a majority to have this clause, namely, to put in an express clause that section 491 will not apply to any persons detained under the Act. If we are now going to pass this Act and if we repeal that section, there can be but one implication, namely, the corresponding section 491 will apply to these proceedings. That is an impossible situation, because, by reason of the Bengal Act, as my Honourable friend, Mr. Neogy,—I should use the full name—Mr. K. C. Neogy.....

Mr. K. C. Neogy : It is not necessary in my case.

The Honourable Sir Nripendra Sircar : Mr. K. C. Neogy said that executive judgment had been substituted for the judgment of the Court. That is perfectly right, I am not going to dispute that for one second.

But if that is so, what are the unfortunate High Court Judges going to do ? If the object of deleting the section relating to 491, is that the High Court will test the grounds on which the opinion of the Government was based, then the High Court would be helpless. They have been made helpless, not by anything which this House has done, but by the Bengal Act. Sir Abdur Rahim made another point, and that was quite a debatable point. He made the point : “ Very well, but supposing the man has been kept in custody in jail, and, as a matter of fact, none of the provisions, even of this Act, had been complied with,—imagine a case where a man is put in jail. It is said that he is being kept in jail under the provisions of the Bengal Act of 1934, but, as a matter of fact, there was no order from the proper person in the Government expressing his opinion that this man ought to be kept in jail.” Would the High Court have the power to interfere or not ? I think that is the point which my friend, Mr. Lalchand Navalrai, had in mind when he said, it was conceded by my predecessor that in such a case the High Court would have the power to interfere in spite of this second section relating to section 491 ; and, if I may say so, with respect to my learned predecessor, his answer was quite correct. All that the High Court could see in the supposed case, is, whether, as matter of fact, the provisions of this Statute had been complied with. There, its jurisdiction ends. It cannot go behind the order of the executive and then find out for itself whether the executive arrived at a right or a wrong conclusion about the guilt of this person. It has no right to sit in judgment over executive opinion, which is conclusive by reason of the Bengal Act.

Sir Abdur Rahim (Calcutta and Suburbs : Muhammadan Urban) : Then my Honourable friend agrees that the High Court can interfere with an order which does not conform to the provisions of the Act.

The Honourable Sir Nripendra Sircar : Yes. As a matter of information, I may tell my Honourable friend that this specific point came up before the Calcutta High Court, either last year or towards the end of the year before last. I am not sure whether both the cases have been reported. I believe one has been reported in the Calcutta Weekly Notes. I could not lay my fingers on the decision this morning. I think that Sir Abdur Rahim will remember that several applications were moved in the Calcutta High Court. Two of them were applications based on this particular ground, namely, that the provisions of this Act have not been complied with. In one case, the Bench was constituted, I think, by Mr.

[Sir Nripendra Sircar.]

Panckridge and another, and, in the other case, by Mr. Justice Ameer Ali and another Judge. However, the names of the Judges do not matter. I believe in each case they granted a rule, and I submit that they granted it quite properly, because *prima facie* on the affidavits there was an allegation that the provisions of the Bengal Act had not been complied with. In both these cases, rule was issued and the Crown was called to show cause and the applications were ultimately dismissed, not because the High Court had no power to go into that question, but because in each case the High Court was satisfied that there was an order by the executive which made it clear that in their opinion the man ought to be detained in jail without trial under the provisions of the Statute. I mention it specially because I find that Sir Abdur Rahim raised this question and that question has now been decided by the High Court in the way in which my friend contended.

I have only one other matter to raise. I have already said that whatever the conclusion might have been in 1932, this House thought it was unnecessary to introduce section 2, and they did act accordingly. At the present moment, the position is that this House having once considered it necessary to make it perfectly clear that section 491 was not going to apply ought not to withdraw it on the ground that it is unnecessary. After all, this House will certainly agree with me that this application of section 491, this question of law which we are discussing here and which Mr. Lalchand Navalrai raised, after all they are really of no substance whatsoever, nor of any material importance for obvious reasons. What according to my learned friends is the mischief, namely, the mischief of the substitution of executive judgment, that has been done by the Bengal Act, and having regard to the Bengal Act, it is not competent to the High Court, whether section 491 is made applicable or it is removed altogether, to go behind the opinion formed by the executive in relation to the necessity of detention under the provisions of that Act.

I do not think I shall take up more time of this House. If any other new points are raised about *Habeas Corpus*, common law rights or English constitution or Magna Charta, Petition of Rights, and so on, I shall certainly have an opportunity of dealing with them when the amendments are moved.

Mr. Lalchand Navalrai : On a point of order.....

Mr. President (The Honourable Sir Shanmukham Chetty) : The Honourable Member will simply state the point of order. The Chair proposes to hear arguments in support of the point of order later on.

Mr. Lalchand Navalrai : I want to have a ruling from the Chair whether the *Habeas Corpus*, the common law, can be superseded by this Legislature ?

Mr. President (The Honourable Sir Shanmukham Chetty) : If that is the only point on which the Honourable gentleman wants the decision of the Chair, it can straightaway give the ruling, without having the need of hearing arguments for and against. So far as the powers of this Legislature are concerned, the only restriction placed is contained in section 65 of the Government of India Act, and, under section 65 (2),

the Indian Legislature has not power to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

The Chair understands the Honourable Member to mean that the *Habeas Corpus* law, being a part of the unwritten law and constitution of Great Britain and Ireland, any law of this Legislature affecting that law would be *ultra vires*. Is it not ?

Mr. Lalchand Navalrai : Yes, Sir. That is the point.

Mr. President (The Honourable Sir Shanmukham Chetty) : The answer to that is this. It is not merely sufficient to show that a Bill before this House affects the unwritten law or constitution of the United Kingdom, but any Member, relying upon that section, must also show that that unwritten law of constitution of the United Kingdom is such that on that alone depends in any degree the allegiance of the subject to the Crown. It has been held by the Judicial Committee of the Privy Council that the allegiance of the subject to His Majesty is not conditional, but that it is an absolute duty of the subject, and no Act or law of the Legislature can be an excuse for a subject to abrogate his allegiance to the Crown. Therefore, a violation of the *Habeas Corpus* law cannot be construed as in any way affecting the allegiance of the subject to the Crown and the Bill before the House is *intra vires* of this Legislature.

Mr. Lalchand Navalrai : I am thankful to the Chair for the first portion of the ruling. With regard to the last part, namely, the question of allegiance, the Chair, I hope, will kindly hear us and also give an opportunity to other Members to be heard before coming to a final judgment, because this is a very important point. I was under the impression that this point had been raised at one time, and your predecessor, Sir, gave a ruling. I have asked for the reference, but I have not yet, up to this time, been able to find it. This is a very weighty point which involves more or less strengthening the hands of the executive against the judiciary.....

Mr. President (The Honourable Sir Shanmukham Chetty) : Order, order. The Honourable Member has not raised any new point. It is covered by the point which was raised before.

Sir Abdur Rahim : Mr. President, I am afraid my Honourable friend, Mr. Lalchand Navalrai, drew a red herring across our path. At any rate that led my Honourable friend, the Law Member, to deliver a very interesting disquisition on the law of *Habeas Corpus* and the powers of the Legislature in this country. Well, so far as a point of that nature is concerned, I was perfectly prepared to hear from my Honourable friend opposite a very learned discussion of the character he has given us. Fortunately the question really need not arise and I think on a previous occasion the matter was the subject of a ruling from the Chair, if I recollect correctly, and, therefore, I do not think it is a serious point at all arising from the Bill. But as regards the other arguments of the Honourable the Law Member,—I am sorry that he has left his seat,—I regret that most of us on this side of the House were unable to appreciate

[Sir Abdur Rahim.]

those arguments. We are perfectly aware that he has just come from Bengal, saturated with the local atmosphere, and, therefore, he is not expected to take at present that all-India view which I hope the membership of this House and the Government of India will soon bring about. His arguments in favour of the measure before us are mainly based on the fact that the Legislative Council of Bengal has passed the Act of 1934, and, therefore, we are bound to follow the Legislature of Bengal and pass the measure now before us. Before I deal with that class of argument, which, I submit to the House, has very little value, I wish, first of all, to make my position clear with respect to what the Honourable the Home Member said with reference to the attitude I took up on a question of this character on a former occasion. He cited some passages from a speech of mine which, if I remember correctly, I made in reply to a provocative speech delivered by an Honourable Member of the European Group on a Resolution which was moved in connection with the attempt, I believe, on Sir Alfred Watson, the editor of the *Statesman*. In that speech Mr. James tried to convey that a great deal of responsibility rested upon us on this side of the House in the matter of these terrorist crimes, that we had not done enough in order to ensure that these crimes are put a stop to, and so on, and it was in reply to that speech that I pointed out to the House that the responsibility for dealing with terrorist crimes rested primarily and substantially upon the Government and not upon the Non-Official Benches. I am glad to find that the Honourable the Home Member entirely agrees with that proposition. In the course of my speech, I pointed out also that Government must find out the remedy, and I believe my Honourable friend wants to lay stress on that proposition as if trying to suggest that we are bound to accept any measure that is put forward by the Government. Is that really the position which the Honourable Member takes up? I am sure, he does not take up any such position. I say, now that my Honourable friend, the Law Member, has returned to his seat, even if the Honourable the Law Member was inclined to be technical, the Honourable the Home Member would not say that I am bound to accept this measure, because I had previously said it was for the Government to find the proper remedy.

Sir, the Government ask us to pass this Bill, because, the provisions of this Bill are not within the competence of the Local Legislature. I should like my Honourable friend, the Law Member, to note this fact that the Local Legislature of Bengal is incompetent to enact a measure like this. That is the reason why the Government of India, under the Constitution, is compelled to come to us. Surely my Honourable friend, the Home Member, will not deny that there are extremely good reasons why legislation of this character should not be undertaken by a Local Government, but only by this Government and by this Legislature. Sir, that being the position, the responsibility is entirely laid upon us whether to approve the measure put forward by the Government or not. The question, therefore is whether the provisions of the Bill are such as should meet with our approval, whether it is the right policy for this Legislature and the Government of India to adopt or not.

Sir, there are three important questions which arise. The first is the detention of these political suspects outside the Province of Bengal.

The second is whether the power of the High Court to interfere with illegal detentions under the Act should be retained or should be taken away ; and the third—the most important question—is whether the time limit should be removed and the Act made permanent. Sir, this is an Act which applies primarily to the situation in Bengal. But there are certain important principles involved in it with which the whole of India is concerned. Therefore, we have to consider the provisions from the all-India point of view. We have to take a long view of the situation and not merely confine our vision and our examination of the problem to the local difficulties that have arisen in Bengal. Now, Sir, my Honourable friend, Sir Harry Haig, has told us, as indeed we all know, that these terrorist activities began as far back as 30 years ago. He also assured us that the Government of Bengal have been able to establish some control over the activities of these misguided youngmen, but not sufficiently well to satisfy them that a law of this character was no longer necessary. I may just in passing point out that the position taken up by my Honourable friend opposite does not appear to be very logical or consistent. If, as a matter of fact, the Government of Bengal have been able to secure control over the movement remembering the fact that these Acts were passed four years back, then surely we are entitled to expect that within a fairly short period of time they will be able to complete that control and stamp out the menace. I say that that consideration *prima facie* arises from the statement made by my Honourable friend, but I do feel that the Honourable the Home Member realises at the same time that his anticipations may not be justified. What he fears apparently is that the terrorist movement may become a permanent feature of the Province of Bengal, and, therefore, he is asking us to make this legislation permanent. Sir, it is a very serious thing to ask of us. It means not only that the House should authorise the Bengal Government to send their political suspects anywhere they like, instead of following the normal procedure of detaining them in their own Province. Not only that, but we should be sanctioning generally a mode of dealing with political movements which can only be justified in an emergency and which should be dealt with only by emergency legislation. Sir, we have often been asked by the Benches on the other side to refer to dictionaries, but I may say from my experience of measures like this that the Government dictionary defines “emergency” as something permanent. Sir, we are seriously asked to hold that the activities of persons who are merely suspected of certain crimes can only be met by the Government of Bengal if these men are confined for all time without any trial whatever. That is to say, the Government of Bengal must be empowered to deprive the citizens of Bengal of their liberty, detaining them whether in the Province or outside the Province as they choose, without any trial, without any remedy being made available to these persons whose liberty is so taken away. Sir, that is asking of us too much unless the Government of Bengal is able to satisfy us that the condition of things that prevails at present is going to remain a permanent feature of the Province of Bengal. Sir, I myself do not believe that that is going to be the case. And I should strongly object to the making of a measure like this permanent on one ground alone, if not on other grounds. It is this. I do not want the Government of Bengal to go to sleep. I want the Government of Bengal to be vigilant and to take the necessary steps, as vigorous steps as possible, to stamp out terrorism from that Province. Sir, what would be the psychological effect of this measure on a Govern-

[Sir Abdur Rahim.]

ment which has not been able to deal with this evil for the last 30 years? They will go on in their good old ways. On the other hand, what we are entitled to expect from the Government of Bengal is that they should find out the real causes, they should spare no effort to find out what are the causes at the bottom of this conspiracy if it is a conspiracy and deal with it vigorously and effectively. Does my Honourable friend, the Home Member, contend that this is not possible? Surely, that would be a very serious indictment of the Government of Bengal. The Government of Bengal is possessed of every possible power and all the resources that can be available to any Government to deal with this menace. My Honourable friend has assured us that he is also thinking of other suitable measures in order to deal with the situation. He simply told us of one, and that is the enlisting of public opinion in condemnation of crimes of this character. But, surely, there are other measures possible by which this movement can be met. My Honourable friend, Mr. S. C. Mitra, has told us that Sir John Anderson, the Governor of Bengal, is particularly loved by the Hindus of Bengal, and yet the fact remains that only the other day a deplorable attempt was made on his life.

Sir, during the last two or three years that we have been considering measures of this character, I must say that we have been kept more or less in the dark, I do not suggest wilfully, but, as a matter of fact, we are not in a position to understand what the real causes of this trouble are. Is it a racial movement? Is it a movement purely aimed against Englishmen? If that is so, I, for one, would publicly tell these misguided youths of Bengal that if they believe that, by assassinating a few British officials, they are going to frighten the British people, that they are going to coerce them to give up their rule in India, then they are absolutely mistaken. I, for one, do not believe for one moment that a single British official will be deterred from doing his duty because of these outrages. I am perfectly sure, and I believe that the British Government would be perfectly justified, if this movement is racial, to use every means in their power to stamp it out. That is a position which no one can deny. Any one who has read the history of the different nations and of different Governments must admit that the British people cannot allow themselves to be driven out of India by a menace of this kind. If this movement is racial in origin, then of course, they would be perfectly justified in taking whatever measures they like. It has also been suggested that the causes are political. There also we are quite in the dark whether it is really the intention of these young men to overthrow British rule in India by activities of this nature. Well, I do think that the friends of these people ought to tell them in as distinct language as possible that if that is their idea, they are wholly mistaken and that they will never realise their political objective. If that is one of the predominant motives, I do not see any chance of conciliation by taking measures which will bring them round to a more reasonable attitude of mind. If by political motive is meant political concessions, then in that case we are equally in the dark, because we do not know what sort of political concessions will satisfy these misguided young men. It has also been suggested that the causes are economic, that most of these young men can find no employment and they thus become desperate and think that, by assassinating some officials, they will possibly achieve their object or that they have become so desperate that they do not care what happens either to themselves or to the officials. Sir,

I am saying all this in the hope that the Honourable the Home Member might take us into confidence as to what—I do not ask him to disclose any confidential information that he has received, but I think he ought to enlighten us what in his opinion—are the root causes of this trouble, whether racial, political or economic. If he is able to find out the causes, then I suggest that the Government will be in a much better position to find the remedy. So far as we have heard speeches from Government Benches, speaking for myself, I feel entirely in the dark. I do not know what the causes are and we must remember that this movement has been going on for over 30 years. The Government of Bengal have an adequate police establishment, they have their detective forces, they have various other means of finding out what is happening, and when they have been able to find out what the real trouble is, then it is that the Government of Bengal and the Government of India will be able to fight this menace. That is exactly what I suggested in the speech from which my Honourable friend quoted one passage. I say, as I said then, that this is a matter of administration. I cannot exonerate any Government which, for 30 years, allow this evil to go on and is unable to find out the causes. I do think, therefore, that the Government of Bengal must be awakened to the situation, and it must be kept up to the mark instead of enabling it to shift its responsibility on to other Provinces and instead of encouraging them to ask the Government of India and this House to give them a measure of this sort as a permanent feature of the Statute Law of India. What I suggest to the Government of India, through the Honourable the Home Member, is that they should tell the Government of Bengal “Very well, you have not been able to deal with this menace effectively so far, we will give you another period of three years or five years at the most, but we refuse to give you for ever laws of this character, because laws of this character, will aggravate the evil the longer they last on the Statute-book”. I, therefore, say, there is really no justification in asking us to make this law permanent on the Statute-book in order to deal with the movement.

I will just say one or two words about a specific point that has been raised. As regards detention of these political suspects outside Bengal, I am afraid the Honourable the Law Member has dealt with it very lightly. He says what does it matter where they are detained, in Bengal or outside? It does make a deal of difference. As a lawyer, for instance, he ought to know that there is a difference between transportation and ordinary imprisonment in one's own Province. Transportation is considered a heavier punishment, and rightly so. Therefore, that fact itself is enough to regard this measure of detention of political suspects outside as something abnormal and as something which ought not to be resorted to, unless the Bengal Government is really compelled to it. I do not attach undue importance to this question, but I do still say, as I said on the previous occasion, that it is a reflection on the Government of Bengal and on the administration of Bengal that they should not be able to make effective arrangements for their own political suspects. My friend, Mr. Sitaramaraju, pathetically appealed to the Government of India not to send these political prisoners to the Madras Presidency: and I believe it is clear from some of the opinions that were received that at least some of the Local Governments are not happy at the prospect of these people being shoved on to their charge. There is, from the point of view of all Provinces, a very strong objection, and under the future Constitution, each Province will become autonomous. I believe the Central Government will

[Sir Abdur Rahim.]

then find greater difficulties in inducing other Provinces to give shelter to the political suspects of Bengal.

Sir, as regards the treatment of these men, I am absolutely sure that so far as the Government of India can ensure it, they will be treated humanly and kindly. They are not criminals who have been convicted of violating the law of the land. They are mere suspects. But I do not endorse the protest of my Honourable friend, the Law Member, when he says that it is a reflection on the Government of India to appeal to them to see that humane and fair treatment is meted out to these detenus. I think the Law Member must know that the heads of Government, though they are technically responsible cannot always ensure that the subordinate officials discharge their duties properly. And, therefore, we, the Non-Official Members on this side of the House, can only hold the Government Members responsible for seeing that these detenus are properly treated.

Now, as regards the question of the powers of the High Court to interfere with illegal orders passed by an official or the Local Government, I think the law has been correctly stated, as we all conceived it, by the Honourable the Law Member, that if the provisions of this Act are not complied with and any person is detained in custody in contravention of the provisions of this Act, the High Court, in spite of the repeal of section 491 of the Criminal Procedure Code, will still have the power to interfere and set such person at liberty. That, I think, is the correct position of the law, and, therefore, it is not necessary for me to go into that matter further.

Sir, the most important question is whether this law should be permanent or not. I believe there are some amendments on the agenda with respect to this provision, and I appeal to Government that they should on no account make this law permanent, but put a reasonable time limit. I say it is not in the interest of the Government of Bengal, any more than it is in the interest of the citizens of Bengal, that a law of this character should be made permanent.

Sir, I do not propose to embark upon the subject of how some officials at times behave towards the people and thereby embitter feelings. I believe the present Governor of Bengal is very watchful and will see to it that such undesirable behaviour as far as possible is not repeated. A great deal has been made of the fact that the Bengal Legislative Council, by a large majority, passed the Act of 1934 which contains provisions of an extremely repressive character,—I use that expression in spite of the criticism of my Honourable friend, Sir Nripendra Sircar. Sir, I take that as a fact in favour of Government but that fact does not exonerate us from discharging our responsibilities in the matter. The state of things in Bengal is still not all that is desired and the Government of Bengal think that such a measure, as is contained in the Act of 1934, is necessary in order to enable them to meet the situation. Sir, I do not wish to criticise the Bengal Legislative Council; I shall give them credit for having done what in their judgment appeared to be the right thing and I do not challenge that position as taken up by the Law Member. But so far as this Bill is concerned, it is solely our concern, and I deny the proposition that it follows as a matter of course that, because the Act of 1934 has been passed by the Government of Bengal, therefore, we are bound to enact this measure. I know there is no time limit in the provincial Act, but that is not

inconsistent without asking Government to put a time limit to this measure. It may be asked, what will happen ? Supposing a time limit is put here, say, for three years, what will happen as regards the prisoners that will be dealt with under the Act of 1934 after the three years have expired ? The answer is obvious. If the Government unfortunately find,—which I hope they will not find,—that the situation has not been brought under control in the next three years, then it is open to them to come to this Legislature, as they have come now, to extend the Act for another period. It may be said that, under the new Constitution, responsibility may be introduced in the Central Government as well. I hope it will. We are not at all sure about it, and I do not think even the Honourable the Home Member is sure about it. But even so we know that under the Constitution it is proposed the Governor General as well as the Governors will have uncontrolled legislative power. They can pass any Act they like and they can veto any measure of the Legislature. This is in addition to the power to issue Ordinances. All those powers being there, I do not see what justification there is for the Government of India to ask us to place this measure permanently on the Statute-book. On the other hand, as I have ventured to suggest to the Government, it would be bad policy, so far as the Government of Bengal is concerned, to pass a permanent measure of this kind. The Government of Bengal ought to be told in so many words : “ We give you three years in which you must put your house in order. This thing has been going on long enough, and you have not been able to do much. We give you another three years and let us see what you are able to do within that time ”. I do not believe really—and I have some little experience of administration—that the situation is past remedy, that it cannot be controlled by proper methods and within a reasonable time. I, therefore, strongly object to this measure being placed on the Statute-book permanently.

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

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

Mr. E. Studd (Bengal : European) : Sir, as I listened to the lucid, and, to my mind, convincing speech made by the Honourable the Home Member yesterday in introducing this measure, it seemed to me that he was making a proposition that anybody could understand quite simply and easily. As I listened to the speech of the proposer who made the motion for circulation and, to my mind, his somewhat laboured explanation of the difficulties in understanding the question fully, it seemed to me that he was confusing the issue instead of clarifying it, and as he proceeded with his speech, it certainly seemed to me that he had confused the issues as far as he was concerned, for he spent a considerable time in arguing against detention without trial, or as he preferred to put it, detention on mere suspicion, a line of argument which one or two other speakers also chose to adopt. But, Sir, it seems to me that that argument is really entirely irrelevant to the present question. Whether the present Bill is passed, whether the Act which it seeks to extend is made permanent or is extended for a period of a few years or is allowed to lapse

[Mr. E. Studd.]

next year ; whichever of these alternatives may occur, detention without trial is provided for under the Bengal Act and will continue, and, therefore, I submit that question does not really arise out of this proposal.

Sir, there are two points in my friend, Mr. Mitra's speech to which I should like to refer. I do take exception to his accusation which has been repeated by other speakers that these men become detenus on mere suspicion. He ought to know as well as others that that is by no means the fact. Definite and ample evidence has to be submitted to the appointed authority before any man is declared a detenu. Now, Sir, I think it was my friend, Sir Abdur Rahim, who, in a previous debate on this subject, stated that terrorism was a subterranean movement and that it was impossible for the ordinary man to know how it works. Now, if you have to deal with a subterranean movement, you have got to adopt underground and secret measures for getting your evidence and your information to deal with it, and if you have to work in that way, I think it is obvious to any sane man that if that evidence, when it has been obtained, has to be submitted to a Court of law, the source of that evidence becomes public property, and that means you cannot in future use that same source to get any further evidence or any further information. And, Sir, there is another very strong argument against making that evidence public, and that is, while it is difficult to get a member of the public to come forward to give evidence or information in ordinary cases, it is still more difficult in the case of terrorist activities, because of the very natural fear they entertain that, if they do come out into the limelight, they will be the victims of reprisals. I should like to remind the House that it is no idle fear, for on more than one occasion there have been cases of witnesses who have been shot by the terrorists, because they dared to give any information.

An Honourable Member : When was the last of that ?

Mr. E. Studd : Now, Sir, there is another point on which my friend, Mr. Mitra, spent some time in arguing the question relating to complaints about the treatment of detenus. We have in this House on frequent occasions listened to long strings of questions and supplementary questions on that subject. Personally, I have sometimes marvelled at the unruffled patience with which the Honourable the Home Member answered those questions. For, Sir, it seemed to me listening to the questions and answers, that a great many of those complaints were unfounded or grossly exaggerated, and that in any case where there does seem to be any real cause for complaint, Government have always shown their readiness to investigate the matter and to adopt any measures possible to remedy the complaints. But, Sir, I submit that even if there are cases of hardship, that is no argument against the continuance of these measures. I should like to remind my friend of the saying " Hard cases make bad law ", and the chief consideration is not whether individuals unfortunately are suffering hardship, but what is to be for the greatest good of the greatest number. I do not think that any sane and reasonable man will attempt to deny that the enactment of these measures has definitely achieved the greatest good of the greatest number, it has helped at any rate to check the evil of terrorism and to bring more security to the general public.

Now, Sir, in spite of what almost seemed like red herrings being drawn across the trial in the shape of legal arguments, it seems to me that the

issue is a perfectly clear and simple one. It is sought to enact this Act as a permanent measure, the principles of the measure have had already been accepted by this House two years ago, and they have been in operation for something like two years,—the first is to keep the detenus outside Bengal, the second is to bar the power of intervention of the High Court. Now, Sir, I have not heard anybody in the course of this debate claim that the present Act and the present powers have done no good. I think every one is prepared to admit that they have at any rate helped to check terrorism, even though they have not cured the evil. It is equally beyond question that the evil which we are aiming to check still exists. Surely, Sir, if these two points are admitted, there can be no possible grounds for relaxation of any of the measures which are taken to deal with this evil. I certainly endorse what the Honourable the Home Member said in his speech regarding the study of the history of terrorism in Bengal during the past 30 years. This is no recent evil unfortunately, and I think any one who will study the history of those outrages and of the measures which have been taken to deal with them will inevitably come to the conclusion that it is the greatest mistake in the world to relax your vigilance or to relax the stringency of your measures just because for the moment at any rate terrorism seems to be dying out. It has been found over and over again that where special powers have been relaxed, because it appeared that the evil was decreasing, immediately terrorism raised its ugly head again. We, Sir, for our part are under no delusions in this matter. We do not believe that the task will be either an easy one or a quick one; we believe that it is going to be and it must be a long fight and a stern fight. And I should like to tell my Honourable friends on the other side of the House that unusual powers of this kind are just as distasteful to the Englishman as they are to any Indian. The whole of our history and tradition and upbringing has taught us to dislike anything that curtails the liberty of the subject. But, Sir, we are so convinced of the evils of terrorism, we are so certain that desperate evils require desperate remedies, that we are determined to support these measures which we consider necessary, with the whole of our strength. Sir, when I say that, I am quite sure that I am not speaking merely for those Benchas or for the European community in Bengal. I am quite sure that those views are shared by every European throughout this great country. Now, Sir, we hold those views, not, as I think the Leader of the Opposition seemed to suggest this morning, because our community has been the one which has hitherto at any rate suffered most, or because we think that there is anything racial about it. We are quite convinced of there being something far deeper than that. We believe that it is a blot on the fair name of India and that it is entirely contrary to the whole grain of Indian culture and Indian traditions and we maintain most firmly that the fair name of India is just as dear to those of us who spend the best part of our life in this country as it is to Indians themselves. For that reason we see in terrorism a canker which must either destroy or be destroyed, and that is the reason why we are so determined to support any measures that are necessary to cope with it. We are convinced that it is a menace not merely to the present Government, but to any Government. I have heard it argued that when Constitutional Reforms, when Provincial Autonomy come in, terrorism will die a natural death. I think that that is the greatest delusion. The terrorist's hand is against every man who does not agree with his way of thinking or does not approve of his way of doing things, and I am quite certain that the

[Mr. E. Studd.]

new Governments will find terrorism just as much a menace as the present Governments have found it. And it is just because we feel that the new Governments will have constantly to deal with new and difficult problems without the ripe experience and traditions which long years have given the present Government, that we feel that terrorism should, if possible, be removed before they undertake their task.

There is another point with regard to this measure which, I think, deserves consideration. This, to my mind, is not merely a question of co-operation with the Government of India or the Government of Bengal ; it is something much bigger than that. It is co-operation also with the people of Bengal. I do not think that there is the slightest question that, if it had been possible for these powers to be included in the Bengal Act, they would have been passed by the Bengal Legislative Council with just as big a majority as it did actually pass the Act as it stood. My Honourable friend, Mr. Mitra, in the course of his speech, told the House that he had been informed by a high official that even from Deoli communications were being established to some extent with the outside world and that a certain amount of conspiracy was being hatched even there. Surely, that is an argument against his own case. If even from Deoli such things can happen, it is quite obvious that, if the detenus get back into the middle of Bengal, such things will happen to a very much greater extent.

Now, Sir, my Honourable friend, Mr. Lalchand Navalrai, said that he would be agreeable to an extension of this Act for a few years, but he thought that it would be most unreasonable to make it a permanent measure. I do not know what was at the back of his mind in saying that. He comes from a part of India where he has not had an opportunity of coming into close touch with terrorism, and, possibly, therefore, he does not realise the strength of the movement or the magnitude of the problem. I should prefer to think that it was that, rather than weakness which prompted him to say that. But, Sir, it seems to me the great objection to extending this Act merely for a few years will be, as the Honourable the Home Member suggested, that it will hold out some sort of encouragement to the terrorists that if they can hang on for another two or three years or whatever period it may be, some of these stringent powers will be relaxed and then they will have a better chance of getting their own way. On the other hand, if the measure is made permanent now, surely it is a clear indication to them that Government, backed by the Legislatures, are out to fight them to the bitter end, and that they will not relax their efforts or relax their measures to deal with this evil until the evil no longer exists. I fail to understand how there could be any objection to making a measure of this sort permanent. It looks as if my Honourable friends thought that it was like the law of the Medes and Persians which we were told could not possibly be altered. The Honourable the Law Member has pointed out this morning that making it permanent only really means that it is on the Statute-book until it is repealed or amended. There is no question of its being there and it being impossible either to repeal or amend it. I have no doubt that if and when the day does come when the powers are no longer needed, it will be a perfectly simple matter to repeal it, but it does not seem to me that very much damage would be done even if it was not repealed, because, if there

is no evil to deal with, the powers would become a dead letter for there would be no detenus.

Now, Sir, it has been said and said quite correctly that this will not cure the whole evil. That, I think, every one admits. Surely, the fact that it is only a partial cure does not mean that it should be discarded and it has certainly helped. The only question is what else can be done. I must confess that I was somewhat disappointed at the speech of the Honourable the Leader of the Opposition, for I had hoped that we might get some constructive proposals from him. It is so easy to be destructive and to say that somebody has not done his job, that the Government of Bengal is inefficient, and so on, but it is quite another story to put forward some constructive proposals in order to improve matters. But it does seem to me that the two great bodies which can do more than anything else to help us are the Indian press and Indian public opinion. They should not rest until they have convinced these misguided people, and those who are inclined to follow them, that terrorism is something outside the pale. There are undoubtedly many other contributory causes which will have to be dealt with. I do not think I can do better than once again quote the Honourable the Home Member in one of the debates two years ago when he was referring to this subject. He said "mobilize public opinion, make it strong, vigorous and lively". My Honourable friend, Sir Abdur Rahim, this morning referred to a speech which was made by Mr. James from these Benches two years ago. I was not in the House at the time, but I have read the speech and I have read the comments on it made then. Now, Sir, it appeared to my Honourable friend as some sort of accusation. I do not believe it was ever intended to be taken in that light, but I should like to say this. My own view is very much the same as the view that Mr. James held. Can anybody think he has done enough so long as terrorism still exists? It is not a matter that Government can tackle by themselves. It is a matter for every right minded citizen to do his best to contribute his part in fighting this evil. I do maintain that until terrorism is dead and gone, no one has any right to claim that he has done enough. That is no reflection on what has been done. I believe if we are honest in our attempts, we can do something more. It is, I think, noticeable that public opinion is beginning to form, but until these misguided people realise that any act of terrorism is a definite act of treason to India and will be regarded as such by their relations and friends and by the leaders of their community, when public opinion gets as far as that, then I believe that terrorism will cease to be a menace. Now, Sir, I submit that there is no body of men that could give a better lead to public opinion than this House--the elected representatives from all over India. To my mind the motion for circulation is merely shirking responsibility. This is merely saying "we are not prepared to tackle this unpleasant subject until we have heard what other people have to say about it". I venture to suggest that perhaps the greatest single blow that we can strike at terrorism and the most effective way of educating and encouraging public opinion will be the passage of this Bill through this House without a division.

There is one other aspect I should like to touch upon before I finish, and that is this. Have my Honourable friends considered what the effect of refusing to pass this measure or of making great difficulties about it may be on those doubters who exist, who have openly expressed misgivings on the subject of the transference of law and order in this country or

[Mr. E. Studd.]

on the die-hard section at home ? Whatever we may think of their views, we cannot ignore that factor in the situation. Are we going to play into their hands by refusing to take these measures, because they are unpleasant, or are we going to cut the ground from under their feet by passing this measure and rigorously enforcing its provisions. I look upon this measure as a plain duty to the present Government and the future Governments which we hope soon to see installed. It is a definite step in the furtherance of the cause of the Reforms. I am convinced that it is for the good of India, that India, which all of us, Europeans and Indians, love and seek to serve.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadian) : I think there is no one on this side of the House who would not agree with Mr. Studd that terrorism must be stamped out from this country, and there is no one on this side of the House who would not agree with all that has been said by the Honourable the Home Member that terrorism is a menace, not only to the peace of Bengal, but to the whole of India ; but the question which the Honourable Mr. Studd has raised and which the Honourable the Home Member has raised seems to me, with due respect, to be wholly irrelevant. We are here concerned with the perpetuation of a Statute which was passed in 1932. The Honourable the Home Member and the Honourable the Law Member and, last of all, Mr. Studd appealed to us by stating that only two years back we had accepted the principle of the Bill. Human memory is short. If Honourable Members will recall the proceedings of 1932, they will find that emphasis was laid by all speakers on the fact that this was merely a temporary measure, and, because it was a temporary measure, this House was prepared to support the Government. Let me read to the Honourable Members what I myself said speaking from the Opposition Benches :

“ That being the position of this side of the House, we are not going to intervene in the further progress of this Bill, but at the same time we wish to tell the Honourable Members on the Treasury Benches that whatever you do, whether for the purpose of laying terrorists by the heels or ruling the whole country by Ordinances, it is only a palliative and not a cure.”,

and, then, later on, I went on to state that the primary reason which had led the Opposition Benches to support the measure was the fact that its duration was limited to a period of two or three years.

Now, Honourable Members will perhaps remember the view of the case that I am going to place before them. In 1932,

3 P.M.

the terrorist movement was at least 28 years old. The Honourable the Home Member reminded us that it is now about 30 years old. And I cannot for one moment assume that the Honourable the occupants of the Treasury Benches were not aware of the argument that has been used by the Honourable the Home Member and repeated with such vehemence by other speakers on the other side of the House that, because this is a temporary measure, therefore it ceases to serve its purpose, because the terrorists wait for their time and hope that, after the lapse of two or three years when there will be no measure at all, they will be free to resume their illegal activities. Sir, the terrorist movement started as far back as 1905, and it has continued down today.

Mr. A. H. Ghuznavi (Dacca cum Mymensingh: Muhammadan Rural) : Even earlier.

Sir Hari Singh Gour: As my Honourable friend, Mr. Ghuznavi, reminds me, it started even earlier. Now, if there was anything in the argument that permanency is a cure for the terrorist movement, I am perfectly certain that the old Legislative Council, which was responsible for the enactment of legislative measures, would have placed on the Statute-book a permanent measure against terrorism, but it did not do so. And when the late Lord Minto began to deport terrorist and others under Regulation III of 1818, we have in the words of the Secretary of State for India the following comments thereupon. Let me read to Honourable Members what the Secretary of State himself wrote in his Despatches and since published in John Morley's *Recollections*, Volume II, page 250. He says in his letter to Lord Minto:

"The question is the Future. It is like the Ozer and the Duma."

I make a present of these words to the Honourable the Home Member—

"Are we to say, 'you shall have reforms when you are quiet. Meanwhile we won't listen to a word you say. Our reform projects are hung up. Meanwhile plenty of courts-martial, *lettres de cachet* and the other paraphernalia of law and order'. People here who have been shouting against the Grand Dukes in Petersburg for bullying the Duma will shout equally vociferously against you and me if we do in our sphere borrow the Grand Duke policy."

Now, Sir, the Honourable the Home Member, in spite of these observations made by his former chief, is following the Grand Duke policy. At page 217 occur the following words:

"Deportation is an ugly dose for Radicals to swallow; in truth, if I did not happen to possess a spotless character as an anti-coercionist in Ireland, our friends would certainly have kicked a good deal. As it is, if a division is forced after my speech, we shall have against us the Irishmen, most if not all of the Labour men, and a fair handful of our ordinary rank and file. This may put me personally into something of a hole; for I don't see how I could carry on, if I found myself opposed by a majority of our own party. However, we need not say good-morrow to the Devil until we meet him.

I suspect your difficulties will only now be beginning, for the reactionaries are sure, after getting their first mouthful of Energy, to clamour for more—right and left. Personally, I am not at all squeamish in such a community, or mass of communities, as India is, for a conflagration there would be too terrible."

Then, I wish to draw your particular attention to the closing passage which I shall read:

"The worst of it is that we do not really know, and cannot know, what is going on in the subterranean depth of the people's own minds."

Sir, these are pregnant words: and the Honourable the Home Member may feel that, because he is faced with an attenuated House and is sure to carry this measure on to the Statute-book, the last will be heard of it in this country. It may be so, but we have friends on the other side of the ocean, and they at any rate will recall the words of their own Secretary of State and examine the position more independently than we are able to do here today. Whatever may be the fate of this measure, this side of the House cannot be a consenting party to its passage; and I beg further to say that no measure, which the Government have hitherto brought forward, has received the opposition of this House merely because it was a Government measure. Only two years back, we supported the measure, because it was a temporary measure, but it is one thing to pass a temporary, emergent measure, just as we have had in England the suspension of the Habeas Corpus Act, but what would the House of Commons say if the Habeas Corpus Act were suspended for all time? And that is what the

[Sir Hari Singh Gour.]

Honourable the Home Member is now striving to do by this measure. He is suspending the operation of the Habeas Corpus Act, enacted in section 491 of the Criminal Procedure Code, for all time, and I submit it is upon that crucial point that we and he are at issue.

The Honourable Mr. Studd said that the Honourable the Leader of the Opposition had made a destructive criticism of the Government measure, but had not suggested any constructive scheme. Well, Sir, a constructive scheme it is very easy to suggest, but it would not perhaps be as easy for the Government to adopt it. If the Honourable the Home Member had come forward with a Resolution to appoint a Committee to go into the terrorist movement and to suggest means and measures, I am quite sure we would have helped him and suggested a line of action which would not have been as obnoxious as the present measure is. Even as it is, we would have gladly joined our friend, the Honourable the Home Member, in wishing this measure Godspeed, were we sure that the terrorist movement would be laid under its composite provisions ? The Honourable the Home Member has himself admitted that these measures passed from time to time, have not stamped out the terrorist movement. The Honourable Mr. Studd expressed the same view. Now, I wish to ask you, Sir, this. India is suffering from a disease. The Government have been administering a pill from time to time. Now, I wish to know if, instead of administering one pill, you are to give three, is the patient going to recover or die ? And the mere fact, that this measure, whether temporary or otherwise, has been in existence from 1915, when the Rowlatt Act was enacted, down to the present date, has not stamped out to any perceptible degree the forces of terrorism, makes us doubtful whether this measure will serve that purpose. If the measure is inadequate, the fact that it is permanent does not make it adequate. If the measure is adequate, its permanency is not necessary and not called for. I submit that the Honourable the Home Member should reconsider the position in which he has launched himself. I know he said that the Legislative Council of Bengal have passed by an overwhelming majority a measure of which the measure before us is a supplement. But I beg to ask the Honourable the Home Member whether the question of *Habeas Corpus* was before the Legislative Council. Did they pass any measure or did they pass any Resolution recommending to the Legislative Assembly the enactment of a measure in which the Habeas Corpus Act would be suspended for all time ? What is the good of referring to the Bengal Legislative Council because they have passed a measure which is quite different to the measure with which we are concerned ? The measure with which we are concerned is a measure in which we give the *lettres de cachet* to the executive Government and give the aggrieved party no recourse to the Court of law in any circumstances, not even to the High Court under the provisions of section 491. That, I submit, is a main point before us, and nobody on this side of the House is prepared to give a *carte blanche* to the executive to arrest and detain without trial for any indefinite period any person whom they consider to be a danger to the State. Now, Sir, that is the question with which we are concerned, and I submit that if we apply ourselves to this main question, the answer will not be far to seek. It has not only been said but admitted that, so far as this House is concerned, it has only a subordinate position or a secondary place in view of the decision of the Bengal Legislative Council. Let not Members on this side of the House remain for one moment in any delusion that the Bengal Legislative

Council has either passed any law or recommended any law like the one with which we are now dealing. We are dealing here with the amendment of the Code of Criminal Procedure, with the repeal of section 491 of the Code of Criminal Procedure which does away with the power of *Habeas Corpus* given to the chartered High Courts of India. And it is upon that point that we join issue with the Honourable Members on the Treasury Benches. My friend, the Honourable the Law Member, upon whose maiden speech I congratulate him, made, as is expected from an astute lawyer, a special pleading on behalf of the Government. I think at times he was speaking with the tongue in his cheek because he said: "Oh, this is only a preventive measure." Well, Sir, it may be a preventive measure, but why are you going to send these people to jail for an indefinite term? A preventive measure is well understood. Bind them down to keep the peace, bind them down under the provisions of section 107 or section 108, because these are preventive sections, but to send a man to perpetual incarceration to a place unknown can never be described, with due respect to my Honourable friend, as a merely preventive measure.

The Honourable Sir Nripendra Sircar : Will my Honourable friend allow me to point out that in 1932, as Chairman of the Select Committee, he fully approved of each of these principles?

Mr. N. N. Anklesaria (Bombay Northern Division : Non-Muhamadan Rural) : You have anticipated everybody here.

Sir Hari Singh Gour : Sir, because I happened to be a Chairman of the Select Committee in 1932, I have read passages from my speech for the purpose of saying to the Honourable the Occupants of the Treasury Benches in what circumstances we acceded to the request of the Government to legislate for a period of three years.

Then, Sir, my friend, the Honourable the Law Member, said that a complaint was made from this side of the House that the detenus deported outside the province of Bengal would suffer from hardship. He then said: "Do not the prisoners in Bengal suffer from hardship?" I think my friend must have overlooked the fact that there are degrees in hardship, and while prisoners in Bengal suffer from hardship, the Bengali prisoners outside Bengal suffer from greater hardship, and it is against that greater hardship that Members on this side have been complaining. Then my friend said: "What about this Habeas Corpus Act?" He said that from 1870 down today the Calcutta High Court and the Judicial Committee of the Privy Council have held that the Indian Legislature has jurisdiction to legislate in these matters. Well, Sir, assuming for the sake of argument, that it was competent for the Indian Legislature to legislate, there remains the question whether it would be proper for the Indian Legislature to legislate. Jurisdiction and authority is one thing and its appropriate use in the circumstances of the case is another. And I beg again respectfully to join issue with my friend on the other side when he read, or, at any rate, intended to read the provisions of section 65 of the Government of India Act. In it occur the following words (I am paraphrasing them) :

"The Indian Legislature has no power to legislate upon any matters whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India."

[Sir Hari Singh Gour.]

Now, this postulates that allegiance must be subject to some rule or power. None of the Lordships of the Privy Council have said what is intended and what is the common law upon which the allegiance of the Indian subject is dependent. Nobody has ever said that. In the Wahabi case and in the latest case that went up to the Lordships of the Privy Council, Their Lordships simply contented themselves by saying what the section does not include, but they never said as to what it really means and that is really the point with which we are concerned here. If allegiance were unconditional, what becomes of the clause? If allegiance were absolute, unqualified or unconditional, these words would be otiose and yet we find in the Indian Statute these words occurring as limiting the jurisdiction of the Indian Legislature. On a previous occasion to which my friend, the Law Member, has referred, I passed in review the whole constitutional law on the subject. I do not wish to detain this House beyond referring in very few words to what I then said. I said that under the Bill of Rights, when William and Mary got the Crown of England, it was distinctly stipulated that that would be subject to the provisions of the Habeas Corpus Act or what then amounted to the Habeas Corpus Act. Let me read from the book on constitutional law a passage.

The whole Bill of Rights, Honourable Members will find, is dependent upon what is laid down in Taswell-Langmead's Constitutional Law, page 572, upon the right of personal liberty, the most precious of all rights, as old as the Constitution itself. It is the right of liberty which is older than even the common law of England, and it was recognised as the common law of that country and was embodied in the Bill of Rights and afterwards in subsequent *Habeas Corpus* Statutes. I submit that it is open to argument that the allegiance subject to the common law of England referred to in section 66 must necessarily refer to some rule of common law by which allegiance is qualified.

Mr. N. N. Anklesaria : May I ask the Honourable Member in what circumstances a man is absolved from his allegiance to his sovereign?

Sir Hari Singh Gour : I am not here answering my Honourable friend, Mr. Anklesaria's question. I am answering the Honourable the Law Member (*Mr. N. N. Anklesaria* : "Because you cannot answer me"), and I am pointing out to him that merely citing a number of cases commencing from the Wahabi case of 1870 down to the recent Lahore case is no answer to the plain meaning of the provisions of section 66 of the Government of India Act which lays down in unqualified terms that allegiance is qualified by some rule of law and neither Their Lordships of the Calcutta High Court nor Their Lordships of the Privy Council have ever in one of these cases pointed out as to what is that rule of common law subject to which.....

The Honourable Sir Nripendra Sircar : Will my Honourable friend allow me to point out that he is entirely wrong. The Judicial Committee as well as one of the Calcutta judgments have pointed out what those words mean, but I am not prepared to read out the long judgments here.

Sir Hari Singh Gour : If that is all the answer that my Honourable friend on the other side can give, then the answer is somewhat more

emphatic than the answer given by his predecessor, Sir Brojendra Mitter, he was not quite cocksure as to what the meaning of section 66 was, referring as it did, to the allegiance being qualified by the rule of Common Law. But let that pass. I refer that as not a primary question in this case. I am not dealing here with the question of *ultra vires*. I am dealing not with the authority of the Legislature. I will assume that this Legislature has the authority to legislate upon these matters. But I say that is not the point with which we are concerned. Is it right for this Legislature to exercise that power which curtails the liberty of the subject? That, I submit, is the question. That it does curtail, and curtails materially and curtails in a most significant manner the liberty of the subject will admit of no doubt. Even the Honourable the Home Member and the Law Member will not doubt it. My Honourable friend, Mr. Studd, has said that it does curtail the liberty of the subject. What are the impelling causes and reasons which would induce this House to override the fundamental principle of Indian Constitutional Law that the liberty of the subject shall be inviolate. The Honourable the Home Member says, well, terrorism is rampant throughout Bengal. We know it is rampant throughout Bengal, but how are you going to deal with terrorism by this measure? You have tried it and failed. By merely placing this measure permanently on the Statute-book, you are not likely to better things.

My Honourable friend admits that the measure is not likely to stamp out terrorism, other things have to be done. I ask him this question. How can you assert that this measure or similar measures which have been on the Statute-book for a number of years, for at least a quarter of a century which have not sufficed to stamp out terrorism will do so merely because the measure is made permanent? That, I submit, is a question upon which we have our doubts. Then, the Honourable the Home Member said this is not a measure which by itself will control terrorism. Other means have to be adopted. Public opinion has to be mobilised. I echo those sentiments, public opinion has to be mobilised. But how are you going to mobilise public opinion if the public of Bengal and throughout India feel aggrieved that this is a Draconian law—a repressive law which does not discriminate between the guilty and the innocent. If you wish to mobilise public opinion, you must take the public into your confidence. Give the accused a reasonable chance of defending himself. Give the accused the most elementary right of safeguarding his liberty. When you have done that, public opinion would be behind you. But this measure, passed without that salutary qualification, would arouse and inflame public opinion instead of rallying it to your support. (Hear, hear.) Sir, the more coercive the measure, the greater is the feeling of the public against it. As Lord Morley pointed out, you have to count against subterranean mental revolt that exists in the country and is inflamed by the repressive laws. Therefore, I say that it is in the interest of the Government that I am asking them to give the accused a reasonable chance. The Honourable the Home Member says that the executive always examines the cases, and one of the speakers behind me said that they are examined by some Judicial Officers. He further went on to say that if there was a trial or if the High Courts exercise their power of *Habeas Corpus* under section 491, then the evidence would have to be made public. Well, I ask the Home Member, is it not very easy to make a provision

[Sir Hari Singh Gour.]

providing a special procedure for dealing with such cases, that such cases shall be tried *in camera* and that the evidence shall not be published? Such things do occur. There are precedents for it and that would safeguard the mischief which the Home Member and Mr. Studd apprehend. What we are fighting against is not the measure which the Honourable the Home Member has placed before us for consideration, but fighting against its drastic provisions which leave no loophole for the accused to ask for, at any rate, a summary judgment of any constituted judicial authority. That is what we are complaining of.

Sir, that leads me to the other point. How do the executive act? Those who have practised at the bar, as my Honourable friend, the Law Member, has done, know too well the machinery of the executive. It goes down from the bottom from a subordinate of the police department and then it goes up by a concatenation of dittos right up to His Excellency the Viceroy, and the result of that is that the person who really sets the ball in motion is an underling in the police department; and it may be that the executive have gone wrong. They trust too much the man on the spot as the Honourable the Home Member wants us to trust the Council on the spot. In such cases, we also know that there have been numerous cases in our very practice when, out of animosity or from motives of corruption, these underlings report against a particular person. The moment the report is made against him, he is helpless. It goes up and up and up in confidential dockets till an order comes from the Local Government that the man is detained and is transported either to the Andaman Islands or to a segregation camp in Deoli. How are you going to provide against the abuse of power? I can quite understand that in those cases, in which the order is right and the crime of the terrorist is proved to the satisfaction of the executive Government, the executive Government would be justified in detaining him. But what safeguard have you provided in this Bill against the abuse of power by the executive. You have provided no safeguard at all. No man's life is safe under the provisions of this Bill. He may be ever so innocent, but once there is a fiat of the executive, he is done for; he has no remedy. My Honourable friend, the Law Member, said that the High Court has jurisdiction to examine whether the case comes under the Statute. Of course the High Court has jurisdiction if the case falls outside the Act, but that is not the point. If once a case comes under the Act, the High Courts cease to have jurisdiction even if there was a *prima facie* case. What we want is that the High Courts should retain jurisdiction just as the High Courts have jurisdiction under the preventive sections of the Criminal Procedure Code of going through,—not necessarily in a detailed form, but at any rate summarily,—and seeing that justice has been done in the case of the accused. And that is the very modicum of the safeguard which we want to be inserted in the Act; and these are the things which would have been considered if you had prepared a new draft to cope with a new emergency and understood that it was to be a permanent measure. I know, Sir, that Government are very fond of tinkering legislation. During the last 14 or 15 years, that we have been in this House, we know that they have pulled out of their pigeon holes old drafts and say, here is the law. Only the other day, in connection with a similar measure, they brought out a Bill which had to be recast from

top to bottom. My friend, the Law Member, may once more refer to the proceedings of the Select Committee and he will see what was done there. On this occasion, they have taken a short cut. This measure was passed for three years, those three years are now about to expire, and so they say : let us make it permanent. But you have never considered the main question whether a temporary measure is suited to be enacted into a permanent measure and whether a measure enacted to deal with a temporary emergency could serve the purpose which you have in view, namely, of checking the terrorist movement in this country. These are questions which Government have never considered, and, therefore, I submit that it is a crude measure ; it is a measure which there is no justification for saying will serve the purpose which it is intended to serve. But one purpose it will serve ; it will be a messenger of discontent throughout the length and breadth of the country. The student of law reads in the class rooms of the well-known phrases, " Every Englishman's house is his castle " ; " Every Englishman is entitled to *Habeas Corpus* " ; " Every Englishman is entitled to the liberty of person and property " , and so on. When these catch phrases of English law are read by the Indian student in the class rooms, let alone the professors and the grown-up people, what will be the result throughout the country ? There will be a growing discontent against this measure that it tramples under foot the most elementary and precious rights of man. And, therefore, I submit that it is up to you to reconsider it. We are not against measures designed to suppress terrorism ; we are in favour of them.

My Honourable friend, the Law Member, has reminded you that I took part in shaping a measure which found its way into the Statute-book. But it was a measure, as I have said, which was intended to do its work in a period of two or three years ; and I find, and the Honourable the Law Member admits, that this measure is not sufficient to deal with the crime of terrorism. Therefore, let us put our heads together and devise a new measure, a more effective measure, keeping in mind the fundamental rights of human beings to safeguard their liberty and to see that the measure, while it reaches the guilty, does not punish the innocent. It is very easy to think out such a measure.

My friends, the Members of the European Group, say that we have made no constructive proposal. Well, Sir, on behalf of the occupants of the Opposition Benches, I offer this olive branch to the Honourable the Home Member. Will he accept it ? It is very simple to draft a measure that will deal with the mischief and prevent its abuse. It is to its abuse that we object. The measure, as it is, is a crude production, as I said ; it is not well thought out. You have concentrated, like the one-eyed camel of the Arabian Nights, on one side of the road. The result is that on that side of the road there is nothing but dry field with no grass. If you had only used the other eye, you would have found yourselves confronted with verdant verdure and the result of that would have been that you would not have then suffered from starvation, but would have got every assistance from the popular section of this House. Whatever legislation you may pass in this House, whatever measure you may enact during your government will not be permanent, because there is a Nemesis awaiting these reactionary measures ; and I assure you that, before many months and many years are past, these words of mine will come true. This measure will be blotted

[Sir Hari Singh Gour.]

out of the Statute-book, not by this House, but by a power greater than this House possesses. (Applause.)

Mr. N. N. Anklesaria : Sir, the Centre Party has always stood for law and order, and in every measure pertaining to law and order the Centre Party has always co-operated with Government. This present measure essentially pertains to law and order, and, at the fag-end of the life of this Assembly, the Centre Party is not going to change its attitude. I am, therefore, authorised to associate the whole of my Party with the Honourable the Home Member in support of this measure. The arguments addressed in connection with this measure are based on law and also on facts, many of which are imaginary, as has been amply shown by the communiqué published as regards the allegations with regard to the Midnapore affairs made by my Honourable friend, Mr. Mitra, on the floor of this House.

[At this stage, Mr. President (The Honourable Sir Shanmukham Chetty) vacated the Chair which was then occupied by the Deputy President (Mr. Abdul Matin Chandhuri).]

So far as arguments in connection with law are concerned, I think, after the very able and very powerful speech of the Honourable the Law Member, it would be sheer impertinence on the part of anybody on this side to try to supplement it.....

Mr. B. Das (Orissa Division : Non-Muhammadan) : Then, why do you rise ?

Mr. N. N. Anklesaria : I am not going to repeat the arguments of my Honourable friend, the Law Member. So far as arguments based on facts are concerned, it is a pity that the Pro-Leader of my Party, Mr. Sarma, who has been rightly and courageously fighting the terrorist movement in his paper, the *Whip*, has been forbidden by medical advice to speak on the present occasion : otherwise, he would have spoken himself and given the complete lie to the statements as regards hardships of, and oppressive acts towards, the detenus, which have been alleged on the floor of the House. (Ironical Opposition Cheers.) I am quite sure, the Members coming from Bengal know all this much better than myself ; but we have to look to a greater authority than the men from Bengal here, I mean the decided opinions of the Bengal Legislative Council (*Cries of " Oh "*) who have passed the substantive measure with an overwhelming majority and who are far more interested than friends like my friend, Mr. Gaya Prasad Singh, here, who is now interrupting me. The primary principle on which this measure is based is that of detention without trial. As regards that principle, my Honourable friend, Dr. Gour, was completely in agreement till today with the Government, and I believe on the previous occasion there was not a single dissentient vote of any of the influential Members in this House as regards that principle on which this Bill is based.....

Mr. Amar Nath Dutt (Burdwan Division : Non-Muhammadan Rural) : May I know who are the influential Members and who are not ?

Mr. N. N. Anklesaria : My friend, Mr. Amar Nath Dutt, can judge for himself.....

Mr. K. C. Neogy : Those who have influence with the Government.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran : Non-Muhammadan) : Or those whom the Government can influence. (Laughter.)

Mr. K. C. Neogy : I accept the amendment.

Mr. N. N. Anklesaria : I am not going to take much of the time of the House, because I believe this motion must be decided upon by this evening. (*An Honourable Member* : "Why?") But I will address myself simply to the motion of my Honourable friend, Mr. Mitra, about circulation. So far as I have followed the debates in this House on the present measure, after Mr. Mitra there was not a single Member except Mr. Studd who even alluded to this motion for circulation. No allusion was made by any Member to this motion for circulation. I ask my Honourable friend, Mr. Mitra, what does he want to circulate? Is this a new measure? Is this an unfamiliar measure? This measure has been before this House for over the last five years. I do not understand what relief circulation will bring to my Honourable friend, Mr. Mitra. The principle of detention without trial is a principle very well known throughout the civilised world. In times of stress and strain, when revolutionary activities are making headway in the country, measures giving effect to such principles and far more stringent principles than the principle of this Bill have been enacted in all countries of the civilised world. Take the history of France; take the history of England during the French Revolutionary period; take the history of the Irish Free State; take the almost, if I may say so, contemporary history of Germany. The principle that has been given effect to in these countries is not detention without trial, but actual execution without trial.

An Honourable Member : Let us have it here.

Mr. N. N. Anklesaria : Unfortunately that cannot be given effect to here.

An Honourable Member : Why?

Mr. N. N. Anklesaria : For reasons very well known to my Honourable friend. I ask Honourable Members, who are opposed to this measure, what will happen if this measure is not passed? It is quite plain that the duration of this measure, which is supplementary to the Bengal Act, should be co-terminous with the duration of the substantive Act itself. Otherwise obviously it would land us into very awkward situations which can much better be imagined by this House than described by me.

My Honourable friend, Mr. Navalrai, said the other day that this House passed this measure, with his concurrence, of course, because the Government had given an undertaking that it was to be a temporary measure. I asked him, when was that undertaking given, and he was not able to reply. Today my Honourable and esteemed friend, the Leader of the Nationalist Party, has stated to the House that he gave his assent to the Bill, because he understood that the measure was a temporary one. I ask him who gave him that understanding; who asked him to understand the nature of the measure in that way? . . .

Sir Hari Singh Gour : May I reply to my friend, Sir ? Section 2 : that it shall extend for a period not exceeding three years. That is the undertaking.

Mr. N. N. Anklesaria : That was not the undertaking given by the Government. The Government actually opposed an amendment to that effect which was moved by my friend, Mr. Raju. That was not the undertaking given by the Government. The amendment was carried in spite of the Government votes.

An Honourable Member : Was it carried in the Select Committee or in the House itself ?

Mr. N. N. Anklesaria : No, it was carried in the House itself. In the Select Committee, not a word was spoken about the duration of the Bill, and my friend, Sir Hari Singh Gour, who was the Chairman of the Select Committee, never thought fit to put forward the views which he has now propounded before the Committee or before the House.

Mr. S. C. Sen (Bengal National Chamber of Commerce : Indian Commerce) : The original Act passed in the Bengal Council in 1932 was for three years.

Mr. N. N. Anklesaria : That is so.

Mr. S. C. Sen : Then why do you say that you did not agree to make it a temporary measure ?

Mr. N. N. Anklesaria : You wanted to make it temporary, but Sir James Crerar actually opposed it.

Mr. B. Das : You are doing an injustice to the Government.

Mr. N. N. Anklesaria : No, I am not doing any injustice to the Government. I am stating a fact which you ought to know.

An Honourable Member : Please don't get excited.

Mr. N. N. Anklesaria : I can understand that measures like these are mere palliatives to check the immediate mischief which the terrorist movement may do, but they cannot completely eradicate the evil, and the Honourable the Home Member, as well as several other Honourable Members from this side of the House, expatiated on the imperative necessity of educating public opinion. Sir, I ask, what have the Government done to educate public opinion in this matter ? I also ask in spite of the advice and recommendations of His Excellency the Viceroy in his various addresses asking Honourable Members to educate their constituencies, what have the several Honourable Members, who have spoken on this subject, done to educate public opinion ? So far as I know, Sir, they have done nothing ; nor have the Government themselves done anything to sufficiently educate public opinion. Sir, public opinion, so far as Gujarat is concerned, has now come wholeheartedly on the side of Government, and it is prepared to fight subversive activities standing shoulder to shoulder with Government, but let me tell the Government that that transformation is not due to any act of the Government. That transformation has been solely due to the recent movement against the Hindu religion started by Mr. Gandhi, the apostle of all subversive movements in this country....

Mr. B. Das : Sir, I strongly object to the words used by my friend regarding Mahatma Gandhi that he is the apostle of all subversive movements in this country.

Mr. N. N. Anklesaria : You may object as much as you like, but I am entitled to say what I consider to be the truth. Mr. Gandhi, Sir, did command some influence in Gujarat till a year or two ago, but he has now become an object of sheer contempt of all law-abiding people in Gujarat (Ironical Laughter from the Opposition Benches)....

Mr. B. Das : In the next election, you will lose your five hundred rupees !

An Honourable Member : It is an election speech.

Mr. N. N. Anklesaria : I say, Sir, that Government have done little to educate public opinion, and I am quite prepared to substantiate it. On the contrary, Sir, the present policy of the Government not only does not tend to create opinion in favour of the Government, it, on the contrary, tends to create opinion against it, especially on account of the policy pursued in Bengal. It must be admitted, Sir, that Bengal contains the cream of Indian intelligentsia.....

An Honourable Member : Question.

Mr. N. N. Anklesaria : And I say, Sir, that it is not out of sheer wantonness that you find educated men and women cheerfully sacrificing themselves for what they consider to be the good of their country. Now, Sir, what is the real cause, what is the reason, for all this trouble ? Sir, I have tried to make some inquiries in the matter, and I have found that the root cause of the terrorist movement.....

Mr. D. K. Lahiri Chaudhury (Bengal : Landholders) : Have you ever been to Bengal ?

Mr. N. N. Anklesaria : No, I have not been there, but I have talked with Mr. Mitra who knows all about terrorism and knows Bengal as much as anybody else.

Mr. D. K. Lahiri Chaudhury : Do you say he knows terrorism ? How ?

Mr. N. N. Anklesaria : Yes.

Mr. D. K. Lahiri Chaudhury : How can you say so ?

Mr. Deputy President (Mr. Abdul Matin Chaudhury) : Order, order.

Mr. N. N. Anklesaria : I say, Sir, the result of my inquiries is this, that the Bengal people, I mean the Hindus, mostly from whom the terrorists are recruited, have as their hereditary vocation Government service, and the present policy of refusing jobs to Hindus of Bengal simply because they happen to be Hindus has created an amount of discontent which, as we can easily imagine, has culminated in a movement like the one we are trying to check. Sir, this favouritism shown towards certain classes, at the expense of the other classes, has created an opinion, not only in Bengal, but in my own Province of Gujarat also, that this Government are trying to rule on the maxim of divide and rule. And, Sir, it lends colour to the prevailing belief, which I have voiced in this House in the very first Session of this Assembly, that this communal partiality, a partiality towards certain communities, does create in the minds of people adversely affected a belief that justice has departed from British administration, and I appeal to the Government of India, I appeal to Sir Harry Haig.....

Mr. Amar Nath Dutt : What is the use of appealing to him ? He is going away shortly.

Mr. N. N. Anklesaria : My friend asks, what is the good of appealing to Sir Harry Haig, as he is going away ? But, Sir, Sir Harry Haig will leave his influence behind him, and I am quite sure of that.

Mr. Gaya Prasad Singh : And leave a note about you also ?

Mr. N. N. Anklesaria : I appeal to Sir Harry Haig, because I believe the times which needed a strong man have found a strong man in Sir Harry Haig. Sir, he has restored peace to India, and I ask him to bring contentment to India by getting the Government to adopt a just and impartial policy towards all communities residing in this great land of ours. (Hear, hear.) My Honourable friend, Mr. Neogy, stated that you cannot suppress terrorism by terrorising terrorism. I say that, if, in the words he himself quoted, asserting the majesty of the law for the suppression of lawlessness is terrorism, I would ask the Government to go ahead with their policy of terrorism with full support of men who put India's interests first and the interests of seditious organisations nowhere.

Mr. Amar Nath Dutt : It was my intention to record a silent vote against this pernicious measure, if I may be permitted to use the word. When I heard the last speaker, he, so to say, out-haiged Haig and out-sircared Sircar, and I am obliged to take some of his points and to reply to them.

The Honourable Sir Nripendra Sircar : May I ask the Honourable Member if the notes in his hands were prepared only after the last speech which goaded him to break his vow of silence ? (Laughter.)

Mr. Amar Nath Dutt : There are some notes against my Honourable friend, Sir Nripendra Sircar's speech and some notes against the Honourable the Home Member's speech, but I think they will not be so full as they will be against my Honourable friend, Mr. Anklesaria, for whom I have a soft corner, at least as soft a corner as I have for Sir Harry Haig or Sir Nripendra Sircar. Sir, I shall begin with my amiable friend whom I have known for the last four years. When he first entered this Assembly, he assured us that we must be His Majesty's Opposition. Many of my Honourable friends remember that historic day, but we Members were not inclined to be His Majesty's Opposition, but Opposition to the Government of India. My Honourable friend, with his knowledge of constitutional law gathered in a foreign land, and with his knowledge of history of revolutions beginning from the French Revolution down to the present day revolution in Germany—apprised us of the fact that we should have His Majesty's Opposition although His Majesty is neither here, nor there, nor anywhere.

Mr. N. N. Anklesaria : You do not understand the word.

Mr. Amar Nath Dutt : I do not claim that knowledge of English constitutional law and of English constitutional history as my Honourable friend claims to possess. I do humbly say that I have only gone through the pages of English history beginning from the days of King John, where I have read that, in the year 1215, the barons with swords in their hands got their Magna Charta, and here in India we want to have that Magna Charta, and of some sort as we have in section 491. The Statement of

Objects and Reasons of a Bill is intended to point out to every cursory reader of the Bill all that is salient and all that is necessary to be given notice of, so that lawyers or laymen may know what is wanted of them. And when laymen vote for the Bill, they will at least know the implications of the Bill that is being introduced and attempted to be passed. I am sorry to characterise the Statement of Objects and Reasons of the Bill as a very, very misleading statement of its objects. A cursory glance through it will at once show that the Government only want to make certain provisions of the Bengal Criminal Law Amendment Act permanent, by which they are empowered to send the detenus to a Province other than the Province of Bengal. And because they have enacted another Act by which they have made this provision permanent in Bengal by the Bengal Criminal Law Amendment Act of 1934, therefore it has been argued that this Bill has been found to be necessary. How do they propose to give the Bengal Government those powers? By saying that the second paragraph of section 1 of the Bengal Criminal Law Amendment (Supplementary) Act of 1932 shall be omitted. That second paragraph runs as follows :

“ It shall remain in force for a period not exceeding three years.”

But,—a but follows after that—but I invite the attention of Honourable Members on the Treasury Benches to sections 2, 3 and 4. Was a perpetuation of section 4 wanted by the Government of Bengal, and were they competent to pass such a measure as that? Is it within their legislative competency to repeal a certain section of an Act which has been passed by the Central Legislature? I confess I have not got the same legal knowledge and am not versed in constitutional laws as my Honourable friend, Mr. Anklesaria, and I appeal to him to enlighten the Government on this point whether or not it is within the competence of the Provincial Government to repeal an enactment of the Government of India. I think in this matter his advice may be tendered to the Treasury Benches on the other side as they have been advised by my Honourable friend in other respects, such as those in which he has denounced one of the greatest individuals of the present day and also those in which he has given certain other pieces of advice which the Government may or may not accept. In this connection, I may be permitted to observe in passing that I do agree with one remark of his, and that is, it is the Government which is responsible for these acts of terrorism in Bengal. Of course, he has given one reason. He has said that particular communities are being favoured by the Government in that Province, and naturally the youths of other communities feel it. I do not know how far that is correct, it will be for my Honourable friend, Sir Nripendra Sircar, to say that.

Mr. N. N. Anklesaria : To say what?

Mr. Amar Nath Dutt : Whether you are right or wrong.

The Honourable Sir Nripendra Sircar : May I point out, as the question has been put, that there is no difficulty whatsoever if one has only read section 80A, sub-section (2) of the Government of India Act :

“ The local Legislature of any Province may, subject to the provisions of the sub-section next following, repeal or alter as to that Province any law made either before or after the commencement of this Act by any authority in British India.”

Mr. Amar Nath Dutt : Then why did not they take that task themselves? As a clever lawyer—I have been also at the bar for more than

[Mr. Amar Nath Dutt.]

thirty years, though I do not claim to be as clever a lawyer as the *ex-Advocate General* of my Province.....

The Honourable Sir Nripendra Sircar : It is not a question of cleverness ; one has only got to read the Act. (Laughter.)

Mr. Amar Nath Dutt : If my Honourable friend will only read once more the words which are uttered in this House and bestow the attention which we know he bestowed on his cases and briefs, I am sure he will see that that does not mean that any measure which we here, after the passing of the Government of India Act, enact, they are entitled to abrogate. That is the view of the Honourable the Law Member, and I respectfully beg to differ from that opinion.

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

I was just submitting about the causes of revolution or terrorism which has been stated by Mr. Anklesaria to have led to all these things. I wish also to submit that this matter of the permanent repeal of section 491 escaped our attention till it was pointedly brought to the attention of this House by my Leader, and I think we should all be grateful to him for drawing our pointed attention to that fact. Here we are not only permanently legislating for removing some detenus from the Province, but also we are depriving the whole people of Bengal of their Magna Charta, the right of *Habeas Corpus* which was given to them by section 491 for all times, and here, with due respect to the high office of the Law Member, I differ from the interpretation which has been given by him which may mislead the lay Members of this House, and I warn them against the advocacy of one of the greatest advocates of modern times. Sir Harry Haig, when introducing this simple Bill, as he called it, brought in things with which we have been made familiar from the Treasury Benches, not once or twice or a dozen times, but a hundred thousand times. He brought in the Chittagong riots, and so on, and then he said here is an opportunity given to this House to give their help. Sir, when you are in charge of the administration of a great country like ours, and when you have taken the duty of administering it with even-handed justice, if you really follow the path of righteousness and honour and give to the children of the soil their dues, the right of governing themselves, the right of self-determination. I think we shall then co-operate with you and allow you to administer the country certainly in our interests as well as in your interests. You are not here for a philanthropic purpose. You have not come here, six thousand miles away from your home, for that. You have come here for the sake of bread. In this connection, I am reminded of an old story. When the predecessor of this Assembly, I mean, the old Imperial Legislative Council was appointed, three great men were taken as Members, and one of the greatest of them was Sir Barnes Peacock. When introducing a very beneficent measure, he said " If we are not here to render service to Indians, then why are we here ? " That gentleman, who happened to be a Member of the Imperial Legislative Council in those days, did not know English and it was interpreted to him and he replied at once in Hindi " For your belly's sake ". Sir, we are not such fools as to think that Englishmen are here for a philanthropic purpose. We need their services. We are grateful to them for what they have done for India by

giving us education, by giving us an ordered Government and all the benefits which we enjoy under British rule after the chaos of Muhammadan rule. We and our children will be very grateful to them, but at the same time do not try to delude us by saying that you are here for our benefit. You came for your own purpose and you are staying here in order to perpetuate your rule with the help of Omichands. But that is not the way of a true Englishman and a righteous Englishman. If only they knew to what unrighteous paths they are led by their Indian advisers, they would not adopt this method of governing the country, but our difficulty has been that they do not approach good men for advice. There are lot of Indian *badmashes* to advise them, who are dangerous to Indian freedom and they are misled. I warn them against this and ask them not to enslave Bengal in the way in which they are attempting. Then we have got two reasons why this Bill is being brought in the present Session of the Assembly. The Honourable the Home Member has given one reason and the Honourable the Law Member has also given us some consolation which may be taken as another reason. The Home Member's suggestion is this that it may be that after you are kicked out from this Hall, other people will come in and they may delay, and so on, but the real reason behind this seems to me that other people may not be so amenable to your influence and your Councils.....

Mr. President (The Honourable Sir Shanmukham Chetty) : The Honourable Member should address the Chair.

Mr. Amar Nath Dutt : The Chair would not be so amenable. I shall therefore address through you.

Whatever that may be, that is the Honourable the Home Member's reason—that it may be January or February or March or April, and we may not have this Legislative Assembly. But what has been our experience in the past ? Well, if the Government do wish to have this Bill passed, they can get it passed within a fortnight by going to Select Committee, having it reported and then having it considered and passed, all quickly. So I beg to submit that the reason that has been given by the Honourable the Home Member is, with all due deference to him and to his opinion, is not valid. The other thing which may be taken as a reason and which was given to us as a consolation is this : “ why can't you pass this Bill ? ” This was probably the reason of the Honourable the Law Member : “ You pass this Bill, you are going away, the other people will come, stronger men, and they will do away with it. I am also an Indian. I am your friend. I do not like this measure. We will have it passed as an eye-wash for some months.” (Laughter.) Sir, anyone who knows the constitution of this House, who knows the formidable array of the 40 Nominated Members—26 officials and 14 non-officials—added to those representing the interests of that community for whose interest the Britishers would give you everything save and except the market, I mean the European community which commands sixteen Members.....

An Honourable Member : No, no, twelve Members for the European community.....

Mr. Amar Nath Dutt : All right, nearly a dozen, and then we should remember our amiable friends to whom my Honourable friend, Mr. Anklesaria, referred, that community which is being bribed from the very beginning.....

Mr. N. N. Anklesaria : I protest against the word "bribed". I never said the community was being bribed.

Mr. Amar Nath Dutt : I withdraw the word "bribed"—perhaps the community is being given prizes by being given 25 per cent. of all jobs, the Communal Award and such other things. Very well, we then get almost another thirty or something like that, then it will come to about eighty in a House of one-hundred and forty-four : and knowing full well that they can pass any measure and every measure with the help of this body, the Government do not care. I remember, Sir, in a humbler sphere, that of district boards and municipalities, how the Government in former days had members through nomination to the extent of one-third and how, with the aid of that one-third, they would have any measure brought up for the consideration of the municipality or district board. So long as this House does not consist solely of elected Members and so long as any legislative enactment does not depend upon the vote merely of the elected Members, I think such consolation as my esteemed friend, the Law Member, wants to give us will not really console us in the least ; but I forget that probably my Honourable friend had not much experience, at least that experience which I can claim of these self-governing institutions either in my Province or elsewhere. Be that as it may, I beg to submit it would have been more honest and fair if the Government had not brought up this Bill, and, Sir, that ought to have been their attitude—not that of giving the dog a bad name and then hanging him, as by calling upon us now to pass this legislation so that they might say afterwards, "these are the men who supported us in such Draconian legislation".

An Honourable Member : Are you making an election speech ?

Mr. Amar Nath Dutt : The House has not been dissolved as yet. When the House is dissolved, I shall no doubt make my election speech.

Then, as regards my friend, the Honourable the Law Member's argument, that has been met by my Leader, and the only thing I want to say about it is this. He has said, and there I agree with him, that, in spite of all this repressive legislation, terrorism has not been crushed. Sir, I am not a scholar either of ancient or of modern history of the type of my friend, Mr. Anklesaria, although I may claim to be the father of a scholar of ancient Indian history and culture. Sir, it has been said that it is preventive and not punitive, and here we have the testimony of no less a person than my Honourable friend, Mr. Anklesaria, who has derived his knowledge about it from no less a person than Mr. R. S. Sarma, whose activities are confined to Bengal and who is presumed to know more of my people than my friend, Mr. S. C. Mitra, or Mr. K. C. Neogy, or, for the matter of that, even that of the Honourable the Law Member ; and he has been pleased to say that these detenues are kept in nicely-furnished bungalows with all the luxuries possible—with books and the other amenities of life, and so on.

Mr. N. N. Anklesaria : Even perfume bottles also, I am told ?

Mr. Amar Nath Dutt : Not of whisky bottles ? Be that as it may, if this House can believe one of its Members, and, I think, if I name him, nobody will say that we can disbelieve him, I mean my Honourable friend, Mr. S. C. Mitra, he has his nephew in one of these fine commodious bungalows—the poor boy is not allowed to have any interview with his uncle or with his father, and that not for one month or one or two years, but

for all the years he is going to be detained at Deoli, and wild stories are being recited—we cannot vouch for the absolute correctness of those stories—but wild stories have reached the ears of Mr. Mitra and his family that every now and then big blocks of ice are placed on the chest of this young man, and the reason why he is not allowed an interview with Mr. Mitra is lest such things should leak out and come to the knowledge of the Honourable the Home Member, who has tried at least to do what little justice is possible for him to do, but he is kept in ignorance of all these things that are being done. My friend, Sir Nripendra Sircar's knowledge about the mode of living of these detenues.....

The Honourable Sir Nripendra Sircar : My knowledge is as great as yours.

Mr. Amar Nath Dutt : A little more probably—because neither I nor Sir Nripendra have had the good fortune of ever being a detenu or of being a visitor of a camp for detenues. At this old age I would like to be free, but if we have books, lights, perfume bottles and other luxuries there, I will not mind going there even at this old age. But if the conditions there are as described by the nephew of Mr. Mitra, certainly I for one would not like to go there. I do not know whether Sir Nripendra Sircar would like to go there or not. It has been said by the Honourable the Law Member that in no country has terrorism appeared in such a form. I appeal to him to say from his personal knowledge of other countries of the world, where he has travelled, whether the form of revolutions there was not of a more virulent type than that of Bengal. In Bengal, we have a handful of misguided youths who are patriotic enough to think that they will free their country of the foreigners. Some of them have been driven to this method owing to the economic depression or because youths, belonging to other communities and possessing the same intellectual attainments as they, have been provided with employment and they have been neglected. This sort of thing can be cured by more humane measures than this drastic legislation. Therefore, I submit that it is not the vituperative language to which the Honourable the Law Member objects when we say that it is a repressive measure. This is not only a preventive measure, but it is a punitive measure. As for the preventive measure, we have the provisions in sections 107, 108, 109 and 110 and section 144 of the Criminal Procedure Code wherein we find an iron hand in a velvet glove. Under section 144, you can do anything under the sun. In spite of all these provisions, you wish to arm yourself with these drastic powers and thereby disgrace the pages of the Indian Statute-book. I agree with the Honourable the Law Member when he says that by using vituperative language nothing is gained or lost. But I do submit that the charge of using any vituperative language can hardly be laid at the door of any Members on this side of the House at the present moment. Only we are trying to draw the attention of the Government.

Now, Sir, I have already replied to the argument that the permanency will disappear when the new Assembly comes. Then it was said that there was lot of irrelevant matter brought in. Sir, when the Government are concerned with the sending of prisoners from Bengal to other Provinces, it is up to them to see that their comforts and conveniences are looked after and it cannot be said that these things are irrelevant. With due respect to Sir Nripendra Sircar, I must say that in these matters he was, I think, more led away as an advocate of Government rather than by the consideration of relevancy or irrelevancy. Then, Sir, as regards the

[Mr. Amar Nath Dutt.]

solitary cell, he said that it was common everywhere. Sir, for people who are fired with the imagination that they must free their country from foreign domination, and who, rightly or wrongly, think that the foreigners have no business to rule over us, and it is their inalienable birth-right to have their own government, and if, in pursuance of those high ideals, they pursue methods which are subversive of law and order, then certainly the Honourable the Home Member is entitled to ask us for more powers, and we, at least the older men, would be the last persons to deny him those powers. But you cannot blame them for holding these ideas. If you give them human treatment in the jails by giving them the diet to which they are accustomed, and if you put them in surroundings where they will not feel themselves lonely and where the climate is bearable, surely the British Government will not collapse if these things are given to them. The mighty Government, as the British Government is, can easily afford to do these things for them and thereby wean these misguided youths from the path of revolution and terrorism, and thus save not only themselves, but also save their own countrymen. I quite appreciate that when they take a step like this under laws, it will be a mistake. But if these people can be won over from the path of revolutionary activities, then I believe that even these mistakes will not be committed and the whole country will be saved. I think both you, Englishmen, and we, Indians, will be able to co-operate with each other working hand in hand for years to come. Sir, I have learnt today several legal phrases. I have practised in the mufassil and have never had the privilege of going to higher Courts. and therefore, I will not take up the time of the House by referring to these things. But when it is said that this is not a question of law, I join issue, however high the authority holding this view may be. It is certainly a question of law. The first question is whether or not this Legislature is competent to pass this legislation. Whether or not this Legislature should co-operate with the Bengal Legislative Council and accept their *ipso dixit*. When you ask us to do this, I beg to think that you cannot do so under the law. When the Honourable the Law Member said that his predecessor was perfectly right in giving his interpretation, he was only paying a compliment which everyone pays to his predecessor. His predecessor gave us the assurance that the measure was to be a temporary one.

Mr. N. N. Anklesaria : He never gave that assurance.

Mr. Amar Nath Dutt : I can understand the chain of reasoning by which you can arrive at propositions like this that he never gave an assurance. I beg to submit that he did not utter any such words, namely, that after the expiry of three years the Bill is going to be made permanent. Otherwise, the fate of the Bill would have been different. May I ask my Honourable friend to point out anything like that from the speech of the previous Law Member ? I wait for an answer.

Mr. N. N. Anklesaria : If the Honourable Member should refer to the debates of 1930, he will find that it was actually Sir Cowasji Jehangir who, on behalf of the Opposition, invited the Government to express an opinion and give an undertaking that they will come to the House to extend this Act if the Local Government extended the Act. This will be found in the debates.

Mr. Amar Nath Dutt : I am sorry that I allowed this wasting of the time of the House, because my Honourable friend has referred to

some materials which are not in this astronomical universe. I think I ought to have proceeded with my speech without waiting for this answer. I would say that I feel very strongly on this measure. Even if for the sake of argument there are revolutionary youths by thousands, they have all been captured and more will be captured, I do say that the Government have no justification for perpetuating these repressive laws and putting the whole of a great Province, which once supported the British rule with loyalty and devotion, to restraint in this way, and thereby, alienate their sympathies. It has been rightly said by my Honourable friend, Mr. Anklesaria, that it is the Government that has been terrorising and that has been at the root of all this trouble.

Mr. N. N. Anklesaria : I never said that.

Mr. Amar Nath Dutt : I think the memory of certain Honourable Members seems to be short. If Honourable Members will go back 35 years, I mean towards the latter half on the 19th century, they will find that warnings were given by such far-sighted statesmen as Dadabhai Naoroji, Pherozshah Mehta, R. C. Dutt and Surendra Nath Banerjee and others, and these warnings were given from the Congress Pandal of those days, not the Congress of the present day, but the Congress of those days when such veterans were serving, and they gave warnings in no unmistakeable terms that they wanted to co-operate with the Government and they asked the Government not to drive sedition underground, but to allow the fullest expression to the thought and to remove the grievances. That was the demand then made. I remember, Sir, as young boys our ambition was only to have a few High Court Judges, to have simultaneous examination for the Civil Service and to have the repeal of the Arms Act. These were a few of the items in the programme of the Congress of those days when we joined it 35 or 40 years ago. What is it that occurred since to change the programme of that great constitutional body from asking for a few grievances to be redressed to one of independence. It was because the foreigners, who are administering this country, have not done their duty properly towards the children of the soil. There are a great many names in British Indian history to whom the country will ever remain grateful. We can cite Bentincks, Ripons and Macaulays and several others who devoted their lives to the good of this country. I can also name certain others who lived in recent years, because I have also some knowledge of the history of the present day, but I will not name them, but these are the men who are the greatest enemies of British rule in India. I remember, Sir, a gentleman, who was not a Congressman, but a very learned and erudite scholar, whose name if I mention will be remembered by the Honourable the Law Member, because, at one time, he lived in Bihar, this gentleman was a great Bengali scholar, and you will be surprised to hear that he used to say that the greatest enemies of India were men like Bradlaugh, Sir William Wedderburn, A. O. Hume and others. We were all boys then, and my uncle was surprised to learn that men like Bradlaugh and Sir William Wedderburn were enemies of India, because they wanted to broadbase the British rule upon our affection and thereby perpetuate our slavery. Mind you what kind of administration would give birth to thoughts like this. Have you ever cared to enquire what is at the root of this revolutionary movement? The Honourable the Law Member was right when he said that quack prescriptions will not do. I do submit that these are quack prescriptions to which he is also going to be a party. Let them go deep into the root cause of this revolutionary movement and

[Mr. Amar Nath Dutt.]

try to weed it out and save the youths who are the flower of this country from ruin, and if Government take proper steps, they can win over these youths and they will be very helpful in carrying on the administration of this country to the advantage both to themselves and to their countrymen.

Sir, I see that some of my Honourable friends are impatient, and they desire that I should conclude my speech. I will only say a few words more. As regards the motion for circulation, I must honestly confess that I do not believe in circulation. I would rather oppose it, because what does the motion for circulation mean? The Government will circulate the Bill to proper quarters who are best fitted to give them advice on these matters. The Government also know what sort of opinion they will get. So, Sir, I have no faith in circulation, but my Honourable friend, Mr. Mitra, who has been the victim of repressive laws, desires that the Bill should be circulated, and, therefore, we are in duty bound to support him. But personally I have no faith in circulation. I have been asked to finish my speech as early as possible. I know full well that we cannot carry anything in this House. Still I thought that more than the votes of those, who are always inclined to support Government in order to please them, there are genuine hearts throbbing within the human framework of the Honourable Members on the Treasury Benches, and that if I appeal to them for a more humane consideration for these people, who are taken away from their hearths and homes to a distant Province, I shall get some response. Sir, in my earlier years, I lived for several years in the Rajputana desert and I know the trial and the trouble of living in those deserts. There were no electric fans in those days and the *punkha* had to be pulled the whole night. But if the *punkha*-puller went away at 5 o'clock in the morning,—and I am a very late riser,—I would at once get up as soon as the *punkha* ceased. Then, I remember the difficulty about fish. I remember fish used to be brought one day in the week from far off Delhi by sending a man there and fish could not be had anywhere else. As you know, Sir, we Bengalis are not meat eaters, but we are accustomed to fish.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official) : When was that?

Mr. Amar Nath Dutt : That was from 1882 to 1886.

Then, again, there is the question of climate. My friend, Diwan Bahadur Sarda, if he had been here, could have given us some idea of the climate of a place like Deoli, and Deoli is 70 miles away from Ajmer. There is also the difficulty about getting interviews. Sir, we can well understand that some police officer should be there at the interview. If these detenus are of the type, who cannot be trusted to carry on a conversation, keep a police officer there, but allow them interviews at times with their friends and relations, and give power to the police officer to stop the interview as soon as he finds that something objectionable is being uttered by the detenu or the man who is interviewing him. He will be on this side of the bar and the interviewer will be on the other side. This is a small humanitarian treatment, which I am pleading for, before the Honourable the Home Member, whose term of high office ends in a day or two, and who is going to take up his exalted office of Governor of a great Province, on which we all congratulate him. (Applause.) We appeal to him to do something for these detenus. Sir, at one time I despaired

about getting anything. I know that this Bill will be passed and we will not be able to check its passage. But in the language of the great poet, I was tempted to say, in the words of Karna to his mother Kunti, when the latter wanted to bring him to the side of the Pandavas :

“ *Jé pakshér parājay,
Sé paksha tyajitē morē karonā āhvān ;
Jai hók Rājā hók Pandava santān ;
Āmī rabo hatāshér nishfalér dalēy.
Āmārtē nirmam chittēy tyāga janānee,
Deeptiheen, keertiheen parābhav parēy,
Shoodhoo āi āshirbbād diyē jāo morē,
Jayalōbhē jasholōbhē rājyalōbhē ār,
Virēr sadgati hotē bhraṣhta nāhi hōi.”*

“ Don’t ask me to leave the party that is to lose the fight. Let the Pandavas be victorious and win the kingdom. I shall remain with those whose hopes have been smothered and do not expect success. Leave me to the darkness of defeat and being unknown to fame. I pray only for your blessings, so that I may not swerve from the path of righteousness to secure victory, fame or kingdom.”

So, Sir, that was the thought which was uppermost in my mind. I knew full well that this Bill will be passed and my protestations will be of no avail. But I once more appeal to the Home Member to do some more acts of justice to these detenus as he has done in the past.

Several Honourable Members : The question may now be put.

Mr. President (The Honourable Sir Shanmukham Chetty) : The question is :

“ That the question be now put,”

The motion was adopted.

The Honourable Sir Harry Haig : Sir, the hour is late. It is said that every action produces an equal and opposite reaction and certainly the action of my Honourable friend, Mr. Amar Nath Dutt’s speech impels me to be brief. (Laughter.) The debate has ranged over a very wide field, and I think the House can consider that every relevant argument, every consideration bearing directly or even remotely on this problem, has come before it. Now, Sir, that reminds me of the amendment that stands in the name of my Honourable friend, Mr. Mitra, the amendment for circulation. That is an amendment about which we have heard very little, and particularly from the Mover of it ; and I think the reason is clear. The facts, the considerations, the arguments, are all before this House, and no real reason has been advanced as to the advantage that would be derived from circulating this Bill for further opinion. I think, Sir, it may be regarded as merely a means of postponing a decision, and I submit that all the materials for a decision are before the House now.

Now, Sir, the Honourable Member, Mr. Mitra, with some engaging sentences occasionally interposed which indicate that he is as much interested in the suppression of terrorism as we are, nevertheless seems to me to suffer from certain blind spots in his outlook on this problem ; and the most amazing blind spot that I observed when he addressed himself to this problem was that he actually took me to task for reminding the House of what terrorism really means. He made it a complaint that

[Sir Harry Haig.]

I referred to some of these outrages and recalled them to this House. But, Sir, what is the subject we are debating ? It is terrorism. What is the justification for this Bill ? It is terrorism. And does the Honourable Member really think it reasonable that we should lull ourselves into a sense of security or of negligence ; that we should not remind ourselves of what terrorism really means, the menace that it is, or,—to borrow the words of my Honourable friend, the Law Member,—the abomination, an abomination which we are determined to root out ? I hope, Sir, we shall hear no more complaints that I have endeavoured to recall the House to a sense of the gravity of this problem.

Now, Sir, I was asked by the Honourable the Leader of the Opposition whether I could give any account of the origin of the movement. In a few casual words, at the end of the debate, I cannot attempt to give any exhaustive analysis of it. But I think the House recognises well enough that it originated in what one might call a revolutionary movement ; the object was to overthrow the Government by the method of assassinating Government officials. The movement has spread since then : its aims are possibly wider now than in its origin. A movement like that gathers to itself and embraces all the revolutionary and subversive movements that may arise from time to time. Its aims broaden out, and that has been the case with the terrorist movement. In origin, perhaps the movement of a few people, it has been, I think, reinforced by some belief among a considerable section of the people in Bengal—a belief that is, I think, now disappearing—that the movement had something valuable in it, that it would pay, that it would succeed. That is why I continually stress the importance of public opinion. As long as public opinion is not genuinely opposed to this movement, genuinely determined to root it out, it is very difficult to make an end of it. And besides that, there have been certain predisposing causes among the boys who are recruited to this movement. They are very definitely recruited by revolutionaries for their own ends ; but there are certain causes which predispose them to be recruited, and those causes might perhaps be found partly in an educational system which it is suggested is not altogether in accordance with the needs of the Province and partly in economic conditions. Perhaps one might say that a number of these boys are turned out with a certain lack of hope, with little to look forward to in life, and in that way they tend to become the prey of these people who recruit them into this vile movement. My Honourable friend, Mr. Neogy, acknowledging, I think, that His Excellency the Governor of Bengal and the Government of Bengal were addressing themselves to these wider causes, asked me whether the Government of India were doing nothing. This is a provincial problem ; it has to be handled primarily by provincial means ; but I would remind the House that the problem is to some extent economic, and that the Government of Bengal believe that greater financial resources will help them greatly in removing what I have called some of those predisposing causes, and my answer to Mr. Neogy, therefore, is that this House has already made some contribution in that direction by placing at the disposal of the Government of Bengal half the jute tax—a very substantial contribution.

Now, I want to say a little about the treatment of these detenus at Deoli. That is a very direct responsibility of the Government of India.

One of the last acts of my predecessor was to secure the passing of this Act, VIII of 1932, which we are dealing with today ; and, consequently, I found that one of the first responsibilities that faced me when I took over charge was the organisation and superintendence of a camp for the detenus at Deoli. I realised that it was a very serious responsibility ; I realised that it was difficult to deal with these men in a remote place, far from their own Province, and that it was necessary to have an efficient staff and to have arrangements that so far as we could ensure would work effectively. I got into touch at the very beginning with the officer who had been selected to be in charge of that camp, and until he went on leave a few months ago, I maintained constant personal touch with him. He has visited me here in Simla and in Delhi several times. I myself have been to Deoli and seen conditions on the spot ; the Secretary in the Home Department, Mr. Hallett, has also been to Deoli and seen for himself ; and we have been fully satisfied that the officers on the spot have administered their very difficult charge with patience, with discretion and with good sense. I would remind the House that their task is a peculiarly difficult one, for these men, as my Honourable friend, Mr. Mitra, has himself suggested, are very often not what one describes as altogether normal. They have a considerable measure of freedom, that is to say, from the ordinary restrictions of jails, and they have a great deal of leisure on their hands : they tend to become introspective and self-centred ; the fact that they have no definite work to do, that we cannot give them any tasks, is really, I believe, looking at the matter broadly, bad for them ; and yet I fear this House would not support us if we gave them any compulsory task....

Mr. D. K. Lahiri Chaudhury : Why do you not give them proper education in jail ?

The Honourable Sir Harry Haig : It is an exceedingly difficult problem, and I think it must be admitted that these men are the most difficult prisoners in all India to deal with. My Honourable friend asks me why we do not give them education in the jail ; we do what we can to give them facilities for occupying their time ; we give them ample facilities for games and physical exercises ; we give them a reasonable supply of books ; we allow them to enter for examinations, and I think the House will remember that, only a short time ago, the Government of Bengal brought out a scheme for precisely what my Honourable friend is suggesting—some form of education to fit these boys for something useful when they are released ; but on some point of, shall I say, pride—I do not know what the cause is—I understand that they have rejected the offer.

Well, Sir, my Honourable friend, Mr. Mitra, suggested that he could deal with these detenus, that the solution was to let them out, and I think his view was that he would be able to control them. That is what I understood to be his position.....

Mr. S. C. Mitra : You are not to let out all of them at the same time, but by batches and groups.

The Honourable Sir Harry Haig : I would only say that to take that action at the present time would be inconsistent with the lessons of experience. I would remind the House that in 1924 and 1925, a number of detenus were sent to jails or camps. In the course of the next two or three years, they were gradually released, and by the end of 1928,—I think I am right in saying,—that there was not a single detenu

[Sir Harry Haig.]

still under detention. Well, Sir, if the release of these men is really the cure for this evil, how was it that two or three years later this movement broke out again with a force that it had never possessed before, and we had that formidable outbreak at Chittagong in April, 1930? Did any of these gentlemen, who now suggest that they can control the detenus, control them between 1928 and 1930, and, if not, why not?

Again, Sir, my Honourable friend, Mr. Mitra, suggested that some of these manifestations might be due to *agents provocateurs*. I think his suggestion was that when a long interval passed without an outrage and the Government were beginning to think of relaxing their measures, then some new outrage always supervened, and his suggestion was that cannot be the work of the detenus themselves, but that must be the work of the Government acting through its subterranean agents. Well, Sir, again I would appeal to the lessons of experience. How does a theory of that sort fit in with what happened in 1927, 1928, 1929 and 1930? In 1927 and 1928, there was practically a complete cessation of outrages, and acting on that, the Government did release all these men, and then when the powers of Government had been removed, and not before then, these outrages were resumed. Is that consistent with this theory of *agents provocateurs* being used in order to create incidents which will justify the retention of these powers? The facts are exactly the opposite.

Now, Sir, my Honourable friend, the Leader of the Opposition referring to the speech which he had made two years ago, which I have mentioned, said that he hoped my view was not that I felt he was bound to accept any remedy which the Government put forward. That, of course, was not my intention. What I did welcome in his former speech,—and I must say I found some traces of it in his speech today,—was a spirit of some helpfulness, an inclination to examine fairly our proposals. The main point that the Honourable Sir Abdur Rahim has made against our Bill is that the powers we are taking should not be permanent. He argued that to give these powers to the Bengal Government in permanence would be likely to induce them to relax their efforts. I was surprised to hear such a view coming from an Honourable Member who is well acquainted with Bengal and well acquainted with administration. For surely if one fact stands out more clearly than any other, it is that circumstances themselves absolutely compel the Government of Bengal to devote the main part of their attention to this terrible menace of terrorism, and they cannot possibly relax their attention so long as that menace continues.

Now, Sir, what is the justification for making these powers permanent? That justification, I think, is very clearly to be found in the experience of the past. Let me remind the House of one or two facts. In 1915, the Defence of India Act was passed, and that Act for the first time gave the Government powers similar to those which are now contained in the Bengal Criminal Law Amendment Act. While that Act was in force, the movement was brought very definitely under control. Those powers of the Defence of India Act were removed, I think, in 1919 or in 1920, and in the next year or two, all the main weapons with which the Bengal Government had been fighting the terrorist movement were repealed. The result was that, within a year or two, there was a

very serious and dangerous recrudescence of the movement,—so much so that in 1924 it was necessary for the Governor General to issue an Ordinance re-imposing those powers, and that was further confirmed by legislation undertaken in the Bengal Legislative Council in 1925.

Now, Sir, as I mentioned before, all the detenus were out by 1928, and again the question arose whether these powers should not be allowed to lapse as they naturally would in 1930. It was decided to allow them to lapse. They lapsed in 1930, and, within a month or two, we had that very serious outbreak at Chittagong—clear evidence that the terrorist movement was stronger than it ever had been before. Consequently, in 1930, those powers were again taken, and now once more they are due to lapse in 1935. I say, Sir, that it would have been flying in the face of all experience to continue those powers still on a temporary basis. The experiment has been tried, not once, not twice, and has failed. That, Sir, is the justification for making the powers permanent, and I do appeal with confidence to the House to support a measure which will help us to continue without intermission the struggle against terrorism until it is finally rooted out.

Mr. President (The Honourable Sir Shanmukham Chetty) : The question is :

“ That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1934.”

The motion was negatived.

Mr. President (The Honourable Sir Shanmukham Chetty) : The question is :

“ That the Bill to extend the operation of the Bengal Criminal Law Amendment (Supplementary) Act, 1932, be taken into consideration.”

The Assembly divided :

AYES—60.

Abdul Aziz, Khan Bahadur Mian.
Ahmad Nawaz Khan, Major Nawab.
Ali, Mr. Hamid A.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.
Anklesaria, Mr. N. N.
Bagla, Lala Rameshwar Prasad.
Bajpai, Mr. G. S.
Bhadrapur, Rao Bahadur Krishna Raddi B.
Bhore, The Honourable Sir Joseph.
Brij Kishore, Rai Bahadur Lala.
Buss, Mr. L. C.
Chatarji, Mr. J. M.
Dalal, Dr. R. D.
DeSouza, Dr. F. X.
Duguid, Mr. A.
Fazal Haq Piracha, Khan Sahib Shaikh.
Ghuznavi, Mr. A. H.
Gidney, Lieut.-Colonel Sir Henry.
Grantham, Mr. S. G.

L208LAD

Grigg, The Honourable Sir James.
Haig, The Honourable Sir Harry.
Harbans Singh Brar, Sirdar.
Hockenhuil, Mr. F. W.
Hudson, Sir Leslie.
Ibrahim Ali Khan, Lieut. Nawab Muhammad.
Ismail Ali Khan, Kunwar Hajee.
Jawahar Singh, Sardar Bahadur Sardar Sir.
Kamaluddin Ahmad, Shams-ul-Ulema Mr.
Lal Chand, Hony. Captain Rao Bahadur Chaudhri.
Lee, Mr. D. J. N.
Lumby, Lieut.-Colonel A. F. R.
Metcalf, Mr. H. A. F.
Morgan, Mr. G.
Muazzam Sahib Bahadur, Mr. Muhammad.
Mujumdar, Sardar G. N.
Mukherjee, Rai Bahadur Sir Satya Charan.

Nihal Singh, Sedar.
 Noyce, The Honourable Sir Frank.
 Pandit, Rao Bahadur S. B.
 Perry, Mr. E. W.
 Rafiuddin Ahmad, Khan Bahadur
 Maulvi.
 Raghbir Singh, Rai Bahadur Kunwar.
 Rajah, Rao Bahadur M. C.
 Bastogi, Rai Sahib Badri Lal.
 Rau, Mr. P. R.
 Bow, Mr. K. Sanjiva.
 Sarma, Mr. R. S.
 Scott, Mr. J. Ramsay.

Scott, Mr. W. L.
 Sher Muhammad Khan Gakhar, Captain.
 Singh, Kumar Gupteshwar Prasad.
 Singh, Mr. Pradyumna Prashad.
 Sircar, The Honourable Sir Nripendra.
 Spence, Mr. G. H.
 Studd, Mr. E.
 Trivedi, Mr. C. M.
 Wajibuddin, Khan Bahadur Haji.
 Yamin Khan, Mr. Muhammad.
 Zakaullah Khan, Khan Bahadur Abu.
 Abdullah Muhammad.
 Zyn-ud-din, Khan Bahadur Mir.

NOES—17.

Abdul Matin Chaudhury, Mr.
 Bhuput Sing, Mr.
 Das, Mr. B.
 Dutt, Mr. Amar Nath.
 Gour, Sir Hari Singh.
 Gunjal, Mr. N. R.
 Jog, Mr. S. G.
 Lahiri Chaudhury, Mr. D. K.
 Lalchand Navalrai, Mr.

Mahapatra, Mr. Sitakanta.
 Mitra, Mr. S. C.
 Neogy, Mr. K. C.
 Pandya, Mr. Vidya Sagar.
 Parma Nand, Bhai.
 Patil, Rao Bahadur B. L.
 Sen, Mr. S. C.
 Singh, Mr. Gaya Prasad.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 25th July, 1934.