

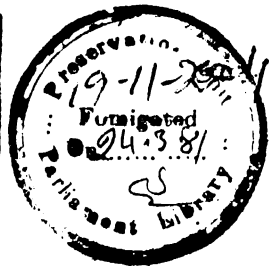
Wednesday, 21st September, 1927

THE  
COUNCIL OF STATE DEBATES

VOLUME II, 1927

*(29th August 1927 to 21st September 1927)*

THIRD SESSION  
OF THE  
SECOND COUNCIL OF STATE, 1927



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## COUNCIL OF STATE.

*Wednesday, 21st September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTIONS AND ANSWERS.

#### APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.

222. **THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** Will the Government be pleased to state whether it is a fact that the Secretary of State in Council has made certain rules to regulate appointments in the Medical Department in Bengal ? If so, will the Government be pleased to lay on the table a copy of the rules referred to above ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** The Honourable Member is presumably referring to the regulations framed by the Secretary of State in Council under Rule 12 of the Devolution Rules made under section 45-A of the Government of India Act. Under these regulations certain posts under Local Governments (including the Government of Bengal) are reserved for officers of the Indian Medical Service. The question of publishing these regulations is under consideration, and I regret that I cannot comply with the Honourable Member's request to place a copy of the regulations on the table.

#### APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.

223. **THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** Will the Government be pleased to inform the Council whether it is a fact that in a letter, dated July 5th, 1923, or thereabouts, or in any other letter, the Government of India communicated to the then Ministry of Local Self-Government, Bengal, the manner in which appointments in the Medical Department in Bengal were to be made ? If so, will the Government be pleased to lay on the table a copy of the letter referred to above ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** The letter referred to by the Honourable Member was in the nature of a formal covering document with which the regulations framed by the Secretary of State were forwarded to Local Governments ; it contained no instructions apart from those contained in the regulations framed by the Secretary of State for the reservation of certain appointments for the Indian Medical Service and for the protection of the existing rights of incumbents of non-reserved posts. I regret that I cannot lay a copy of the letter on the table.

#### APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.

224. **THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** What effect, if any, has been given to the rules and instructions referred to in the two preceding questions ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** So far as the Government of India are aware, full effect has been given to the regulations promulgated by the Secretary of State for India.

**.APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.**

**225. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (i) Have cases occurred in which appointments were made otherwise than in accordance with the rules or instructions mentioned in the preceding questions ?

(ii) Do the Government contemplate taking action to see that the rules referred to above are carried out ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**

(i) The Government of India have no information on the subject.

(ii) As the Government of India are not aware that the regulations framed by the Secretary of State are not being observed by the Government of Bengal, the question of their taking any action does not arise.

**INCONVENIENCES CAUSED TO PASSENGERS AT CHIRIR BANDAR STATION ON THE PARBATIPUR-KATI HAR LINE OF THE EASTERN BENGAL RAILWAY.**

**226. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Have the railway authorities received complaints to the following effect :

- (1) the passenger shed in Chirir Bandar station on the Parbatipur-Katihar line of the Eastern Bengal Railway is in a very bad condition ;
- (2) there is not a single bench on the platform for the use of intermediate and third class passengers at the said station ; and
- (3) there is no arrangement for the supply of drinking water at the said station ?

(b) Is it a fact that no action was taken on the complaints ?

(c) Do Government propose to take necessary steps for removing the grievances mentioned in the complaints ? If not, why not ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The Government have no information. The questions relate to matters which are within the Agent's competence to deal with and might suitably be discussed by the Local Advisory Committee, but the Agent's attention is being drawn to them by sending him a copy of the questions and this reply.

**FORCIBLE ENTRY BY TWO SOLDIERS INTO A RESERVED SECOND CLASS COMPARTMENT IN THE 62 DOWN CALCUTTA MAIL AT DHARAMPORE ON THE KALKA-SIMLA RAILWAY.**

**227. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Is it a fact that, on Saturday, the 3rd September 1927, two soldiers of the Royal Artillery forcibly entered and took their seats in a reserved second class compartment in the 62 Down Calcutta Mail at Dharampore station on the Kalka-Simla-Railway ?

(b) Is it a fact that the gentleman, who had reserved the compartment, called the station master, Dharampore, and the guard to his rescue, but that they did not take any steps ?

(c) Did the two soldiers possess second class tickets or any tickets ?

(d) What action do Government propose to take in the matter ?

THE HONOURABLE SIR GEOFFREY CORBETT: The Government have no information on the subject, but they are forwarding a copy of the question and this reply to the Agent, North Western Railway, who can be relied upon to take any action necessary in the case.

RECEIPT BY THE RAILWAY BOARD OF A TELEGRAM FROM THE SECRETARY OF THE PRESS EMPLOYEES' ASSOCIATION, CALCUTTA.

228. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE: (a) Will the Government be pleased to state if the Railway Board received a telegram, dated 22nd April 1927, from the Secretary of the Press Employees' Association, Calcutta ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to lay a copy of the said telegram on the table ?

(c) Will the Government be pleased to state what action, if any, was taken or is intended to be taken on the said telegram ?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) Yes.

(b) A copy is laid on the table.

(c) The telegram was forwarded to the Agent, East Indian Railway, for disposal.

COPY OF TELEGRAM, DATED THE 22ND APRIL 1927, FROM THE SECRETARY, PRESS EMPLOYEES' ASSOCIATION, CALCUTTA.

Oudh and Rohilkhand employees transferred Calcutta Howrah badly treated. Salaried compositors converted piece pledges broken invidious distinction previous petitions telegram ignored great discontent. Immediate intervention requested.

PROCEEDINGS AND RESOLUTIONS OF THE ALL-INDIA PRESS EMPLOYEES' CONFERENCE HELD IN CALCUTTA ON THE 13TH AND 14TH AUGUST, 1927.

229. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE: (a) Will the Government be pleased to state whether they have received a copy of the proceedings and resolutions of the All-India Press Employees' Conference, which was held in Calcutta on August 13th and 14th, 1927 ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to lay on the table a copy of the resolutions Nos. 8, 10, 20, 21, 25, 29 and 36, passed in the said Conference ?

(c) Will the Government be pleased to state whether they have taken any action on those resolutions ?

(d) If the answer to (c) be in the negative, will the Government be pleased to state what action, if any, they intend to take on those resolutions ?

(e) If the answer to (c) be in the affirmative, will the Government be pleased to inform the Council of the action they have taken on those resolutions ?



**THE HONOURABLE MR. A. C. MCWATTERS :** Government received a copy of the resolutions passed by the All-India Press Employees' Conference. They do not propose to take any action on these resolutions. It is open to any employee in a Government of India Press to put forward a memorial in respect of any grievance and, as a matter of fact, memorials are constantly received and considered. It is also open to press employees to secure recognition for any trade union which conforms to the rules governing trade unions of Government servants, and to bring grievances to the notice of the proper authority by means of such trade unions. The Government of India are not prepared to accord consideration to grievances put forward by press workers through other channels. I do not think that any useful purpose will be served by laying these resolutions on the table, but I shall be glad to send a copy of the resolutions mentioned by the Honourable Member to him if he so desires.

### CRIMINAL LAW AMENDMENT BILL.

**THE HONOURABLE MR. H. G. HAIG (Home Secretary) :** Sir, I beg to move that the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

The occasion for bringing this motion before the House is one which all Members of the House without exception must regret. For it arises out of, and draws attention to, the unfortunate state of feeling which prevails in the country between the two great religious communities of India, a state of feeling which is giving rise to the most deplorable outbreaks of passion between those two communities. Government do not suppose that by introducing any legislative measure they can produce that change of heart which is the only true solution for these troubles. The right note for dealing with these unfortunate dissensions was struck by His Excellency the Viceroy in that powerful appeal which he addressed recently to the people of India. But much as we may hope that that appeal will have the effect it deserves, it must be recognised that, in any event, it is necessary to supplement the feelings of the people by the machinery of the law. We can never dispense with the assistance that the law may give. Now, Sir, it is well known to all Members of this House that the prevalence of malicious writings is one of the main causes which keeps alive this constant irritation, and that possibly no other factor at the present moment inflames the minds of men more than these abominable writings which are published, I regret to say, on both sides. Most of these cases can be, and have been, dealt with under the provisions of section 153A of the Indian Penal Code, and it is not the case of Government that this legislation which is now brought forward for the consideration of the Council will effect any very great change in the situation. But it has been brought to their attention recently that there may be a small loophole through which some ingenious person might escape the punishment which he deserves ; and that is a situation which Government do not think it is reasonable for them to permit to continue. Moreover, the principle of the Bill seems to the Government to be entirely justifiable. As I have said, the action hitherto taken against such writings has been taken under section 153A which provides punishment for those who promote or attempt to promote feelings of enmity or hatred between different classes of His Majesty's

subjects. There is, of course, no doubt that nothing at the present moment is more likely to promote such feelings of enmity or hatred than scurrilous attacks on religion. But after all, section 153A provides only an indirect way of dealing with these attacks, and in the view of Government there is no objection in principle to making these acts punishable directly and in themselves. I would merely mention that the principle of punishing directly offences against religion is already to be found very clearly inserted in Chapter XV of the Indian Penal Code. We are introducing therefore by this measure no new principle. In order to strengthen what may possibly be a weak point in the existing law, Government have thought it their duty to introduce this Bill, and I think I may claim that the reception of the Bill has been very decidedly favourable. Government did not expect that a Bill of this nature would not receive the most careful and close scrutiny, and it is only natural and proper that the Legislature should be reluctant to take any step that might be regarded as interfering with legitimate criticism or the free expression of honest opinion. Government drafted a section which in their opinion provided all the necessary safeguards, but they were anxious that the section should be carefully examined. They therefore welcomed the opportunity of referring the section for closer scrutiny to a Select Committee in the other House. That Select Committee, Sir, gave the matter their most careful attention, and they finally substituted for the original Government draft a form of words which, I think, it will be very difficult for any one to contend does not provide the most ample safeguards for honest writers. Indeed some might think that the section as drafted at present goes almost too far in the direction of providing safeguards. That point, Sir, has been carefully considered by the Government, and I wish to say that they have definitely accepted the redraft of the Select Committee.

What then is the criticism that has been directed against this Bill? The question in the other House has been considered on its merits. It has not been made a party question. I do not know whether the same practice will be followed in this House. Yesterday my Honourable friend Seth Govind Das referred to his Party. I do not know whether it is the intention of the Party to which he belongs to vote to-day as a Party, but if so, I have great hopes that they will follow the lead given by the Leader of their Party in the other House and will support me. The opposition, Sir, appeared to come from a certain body of opinion which was voiced by some members of the Select Committee, who, I think, are mostly connected with the Press. Well, Sir, I can understand that the Press may be inclined to a certain timidity. But I have been unable to appreciate the grounds for their timidity, and if there is any timidity on the part of representatives of the Press, I fancy it must be based rather on instinct than on reason. Paradox, Sir, is in its proper sphere entertaining and may even be suggestive, but when paradox is intruded into serious argument, and in fact takes the place of serious argument, it is apt to be a little bewildering. I am led to this reflection by considering a remark which was made in the dissenting minute of the Select Committee. They said that this measure would be a regrettable concession to intolerance. Well, Sir, let me take a simple illustration. Let us imagine a primitive society living remote from the world, governed by no code of laws, and in that society it is found that the practice of stealing begins to prevail to such an extent that it becomes a nuisance to the whole community, and they decide that they must impose a definite penalty

[Mr. H. G. Haig.]

against stealing. Well, Sir, if those primitive people were told that by imposing a punishment for theft, they were making a concession to theft, I think they would be very much puzzled, and I feel sure that those primitive thieves would say that that was a kind of concession that they could very well do without. I think in the same way we may be excused if we find some difficulty in understanding how a measure which imposes a penalty on those who are intolerant can be described as a concession to intolerance. What this measure aims at doing is not to concede unlimited licence to the intolerant.

There has been other criticism of a general character about the rights of the subject and freedom of speech, all based on what appear to be good, liberal principles. But, Sir, I would appeal from these critics to one who as a man of letters and an exponent of liberal principles would, I think, challenge comparison with any of our present day critics. I mean Thomas Babington Macaulay. The Council are no doubt aware that in the year 1837 Macaulay was President of the Indian Law Commission which considered the first draft of the Indian Penal Code, and in the course of the consideration of the draft of the Code, he was brought up against exactly the same general problems which have been discussed recently in connection with this Bill, *viz.*, whether it was justifiable to make offences against religion punishable under the Criminal Code. I would like to read to the House very briefly one or two extracts from the portion of that report dealing with the Chapter which is now Chapter XV of the Indian Penal Code, and I think no one who hears those extracts will doubt that they were written by Lord Macaulay himself. This is how the note began :

“The principle on which this Chapter has been framed is a principle on which it would be desirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of society. It is this, that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another ”.

Later on, they say :

“Such insults, when directed against erroneous opinions, seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dissension. Instead of eliciting truth they only inflame fanaticism .”

I would like the House to contrast that last sentence with the statement made by the dissenting members of the Select Committee that the Bill may tend to increase fanaticism because it creates a new offence—another instance, Sir, I suggest, of the habit of paradox.

Finally, I will give one more extract from the report of the Indian Law Commissioners. After describing the state of affairs in India, which is in its essentials remarkably true to-day even though ninety years have passed, they say :

“Such a state of things is pregnant with danger which can only be averted by a firm adherence to the true principles of toleration.”

What I wish to emphasise is that the Indian Law Commissioners considered that their proposals—and our proposals follow exactly the same principles—were in accordance with true principles of toleration. We hold that it is not necessary in the pursuit of truth to make malicious attacks on what is held to be sacred by

others, and I believe that is a sentiment which will be endorsed by the Members of this Council. After all, I have heard no answer to the plain question which was put in another place by the Leader of the Congress Party: Does any one desire that a person should be allowed, with the deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, to insult that religion? Does any one desire that? There may be certain persons in this country who do desire it, but I am perfectly certain that there is no one in this Council who has any such desire. Those who in their hearts do not disapprove of religious controversies being carried to these extreme lengths may reasonably oppose the Bill. But this is not the view of the vast majority of people in this country, and provided that full protection is given to the honest expression of views—and I maintain that no one can doubt that such full protection is given—I do not think that any reasonable man need hesitate to support this Bill.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) :  
 First of all, Sir, I want to make the position of my Party clear in this respect. Yesterday, when I wanted three days' time, it was only for considering the Bill as well as the amendments which many members of my Party wished to move to this Bill. We have not made the question a party question, and the members of my Party are at liberty to vote in any way they like.

I have very carefully heard the speech of my Honourable friend, Mr. Haig, and also of the supporters of this Bill in the other place, and yet I am not convinced that there was any necessity for bringing forward this Bill. I have very carefully thought over the matter, and I have in the end decided to oppose this Bill. That, Sir, I am doing on general grounds, and not on any technical grounds because I am not a lawyer. I know that there is a very considerable difference of opinion in this respect, even among the eminent lawyers of this House as well as of the other place. But, Sir, it is rather difficult for all lawyers to come to the same conclusion, as they always find something to say for and something against everything in the world. In my humble opinion on such general questions the opinion of a layman should weigh more than the opinion of lawyers who always think of and see everything in legal terms.

I oppose this Bill, but let me not be misunderstood. I am not for accusing any Hindu avatar or any Mussalman prophet. My reason for opposing this Bill is, that even to-day our law is comprehensive enough for dealing with such persons who accuse these great personalities. The Honourable Mr. Haig himself pointed out that section 153A of the Indian Penal Code deals with this question. But, Sir, his difficulty is that it does not show direct ways of punishment. What the Government always want are direct ways of punishment. This the Government have wanted in everything and not only in this respect. Sir, let me point out that in the matter of law and order much mischief has been done which should not have been done. Then, Sir, according to the Honourable Mr. Haig himself, this piece of legislation is not the true remedy of the troubles at present. And, on the other hand, we find that this Bill adds a new offence to the Indian Penal Code, and what I am afraid of is that in course of time this offence, which looks so simple to-day, may become of an entirely different nature. When the Criminal Law Amendment Act was passed, nobody for a moment, nobody even in his dream, thought that it was going to be

[Seth Govind Das.]

used in the way in which it was used in 1920-21 during the non-co-operation days. We have all become very suspicious, Sir, and the reason of our suspicions is the action of these Treasury Benches. They are responsible for the suspicions which we have.

Even to-day we find ourselves bound hand and foot. There is the Criminal Law Amendment Act, there is the law of sedition, there is section 153A in the Indian Penal Code, which has been referred to by my Honourable friend Mr. Haig, and there are so many other repressive laws in this country. For a man who is not a lawyer and who knows how the Government have used these laws for their purpose, it is not possible to support this measure, even though, on the face of it, it may look an innocent one.

Another reason that I have for opposing this Bill is, that I do not think that the Hindu avatar or Muslim prophet requires any protection at the hands of the law. So far as Hindu avatars are concerned, they had been in the past criticised, and badly criticised, not by the members of other communities only, but by certain sections of the Hindu community itself. We find, Sir, that in spite of these criticisms they are worshipped with the same devotion with which they were worshipped from the very beginning. They are respected with the same zeal as they were respected in ancient times.

As has been pointed out by my Honourable friend Mr. Haig, there is no doubt the Select Committee has improved the Bill to a certain extent. It no doubt provides certain safeguards. Certain amendments were moved in the other place and certain amendments are going to be moved here, but the whole question is whether we should have an evil thing at all. There might be safeguards, but still the evil will remain an evil.

I know that when the Bill was passed in the other place without any good amendments and with one amendment which has made the Bill even more mischievous, it will not be possible for this House to reject this Bill or to pass amendments which might improve the Bill to a certain extent. Still it is my duty to say what I think proper regarding this Bill. Only to record my opinion I am opposing it. With these few words, Sir, I oppose the motion which has been brought forward by the Government.

**THE HONOURABLE MR. MAHMOOD SUHRAWARDY** (West Bengal: Mubammadan): Sir, I rise to give my whole-hearted support to the motion of my Honourable friend the Home Secretary. The circumstances which have necessitated this piece of legislation are well known and need not be recounted here. I must, however, emphatically repudiate the unwarranted suggestion and baseless insinuation in certain quarters that the present measure of legislation is undertaken as a concession to Muslim clamour and to pander to Muslim communal passions. Nothing could be further from the truth. In undertaking the present piece of legislation, Government are simply carrying out the recommendations of the learned Judge contained in the judgment in Rajpal's case, which was prominently brought to the notice of Government by the dissatisfaction it caused to the Muslim public and gave rise to agitation amongst them throughout the length and breadth of India. Fervent appeals were made only the other day elsewhere in connection with the Hindu Child Marriage Bill to Government not to remain neutral or yield to the clamour of

orthodoxy in matters of social reforms, and not to hesitate to do what is obviously right and inherently just. But when Government do what is obviously right and inherently just, as in this case, they are unjustly blamed and charged with partiality to Muslims. Sir, Mr. Justice Dalip Singh, the learned Judge who recommended legislation along the lines of the provisions of the present Bill, is a Sikh by nationality and race, a Christian by faith and religion, and a Brahmoo by marriage. There is not the least shadow of suspicion of Islam or Islamic predilections about him. How then can Government be accused of partiality to Muslims in giving effect to his recommendations? The best proof of the neutrality of Government and testimony to their impartiality is the fact that in the matter of this legislation they are blamed by Muslims and non-Muslims alike. Elsewhere in some quarters strong comments have been made on the conduct of Muslims in criticising the judgment of Mr. Justice Dalip Singh and their action condemned as casting improper reflections on the Judge himself. Sir, if Judges are infallible, I cannot understand why there are so many courts of appeal and why there is such a wide-spread agitation in Europe and America against a recent judgment of one of the highest tribunals of the United States of America. Sir, in the art of agitation the Muslims are but the new disciples and inexperienced pupils of their non-Muslim friends. So far back as 1883 the late Surendra Nath Banerjee, the great Tribune of the people, and uncrowned King of Bengal, condemned in the strongest terms the action of Mr. Justice Norris in bringing a *saligram*, a stone idol, into the court for identification and described it as an act of sacrilege and insult to the religious feelings of the Hindus. He did not hesitate to compare Mr. Justice Norris with the notorious Jeffreys and Scroggs. With your permission, Sir, I beg leave to read an extract from the charming autobiography of that late lamented leader :

"The next incident in my journalistic career that I think should be placed on record is the Contempt Case, for which I was sent to prison for two months. I claim the honour (for such I deem it) of being the first Indian of my generation who suffered imprisonment for the discharge of a public duty. The Swarajists now make imprisonment a qualification for public service. Well, I claim that I possess it, even from their standpoint, and that I was qualified long before any one of them.

The facts of the Contempt Case are these. On April 2nd, 1882, the following leaderette appeared in the *Bengalee* :

'The Judges of the High Court have hitherto commanded the universal respect of the community. Of course, they have often erred, and have often grievously failed in the performance of their duties. But their errors have hardly ever been due to impulsiveness, or to the neglect of the commonest considerations of prudence or decency. We have now, however, amongst us a judge, who, if he does not actually recall to mind the days of Jeffreys and Scroggs, has certainly done enough, within the short time that he has filled the High Court Bench, to show how unworthy he is of his high office, and how by nature he is unfitted to maintain those traditions of dignity which are inseparable from the office of the judge of the highest court in the land. From time to time we have in these columns adverted to the proceedings of Mr. Justice Norris. But the climax has now been reached, and we venture to call attention to the facts as they have been reported in the columns of a contemporary. The *Brahmo Public Opinion* is our authority, and the facts stated are as follows: Mr. Justice Norris is determined to set the Hooghly on fire. The last act of *zubberdasti* on his Lordship's part was the bringing of a *saligram*, a stone idol, into court for identification.....'

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces : Nominated Official) : Is the action of Mr. Justice Norris under consideration, Sir ?

**THE HONOURABLE THE PRESIDENT :** I have observed that the volume in the Honourable Member's hand is a somewhat bulky one. I hope he has no intention of reading it all. I have tried to listen carefully, and I have seen so far no very great relevance to the matter under discussion in the extract which he is reading.

**THE HONOURABLE MR. MAHMOOD SUHRAWARDY :** I read with your permission, Sir, and I stand corrected now. Unless blinded by communal passions and led astray by the bias of religion, our non-Muslim fellow-subjects, who are deeply exercised over the publication of a book which few have read, should place themselves in the position of Muslims whose religious susceptibilities have been outraged and feelings deeply stirred by the scurrilous attack on the character and personality of their beloved Prophet in a vile publication under the offensive and provoking title of *Rangila Rasul* and not under the designation of "Mother India"—a title which, at any rate, does not savour of irreverence or disrespect. Sir, in my humble opinion, Government are perfectly justified in taking note of the deep feeling of resentment caused in the breasts of a large section of His Majesty's subjects, specially in these days of communal strife and conflict, and they would have been failing in their duty if they had not given effect to the recommendation of Mr. Justice Dalip Singh and attempted to remedy the defects in the existing law by undertaking legislation along the lines suggested by him. Sir, with these words I lend my whole-hearted support to the motion of the Honourable the Home Secretary.

**THE HONOURABLE RAI BAHADUR NALINATH SETT (West Bengal : Non-Muhammadan) :** Sir, I do not think that this Bill will have the effect desired. I have not the least sympathy with those enemies of society who indulge in scurrilous writings against religious beliefs or religious prophets. Nobody will deny that the State should have power to punish such people. But the question is, what would be the effect of this piece of legislation? It will only excite the passions of those people whose clamour has forced the Government to bring this legislation on the legislative anvil. In my humble opinion, Sir, the present laws are quite sufficient and are drastic enough to bring these writers within the clutches of the law.

Sir, this Bill, if passed into law, will curtail the freedom of speech and of opinion which is not desirable, as it may be used under pressure against social reformers or those who are anxious that the people should understand the true import of religious tenets and laws. In a vast country like India, where there are so many different religions amongst the people, there is bound to be some amount of discussion with regard to religious beliefs. Although it is not at all desirable that any person who is held in respect by any community should be calumniated by any person either belonging to the same community or to any other community, and I think one who does so should be punished, which can be done under the existing laws: criticisms for the betterment of social or religious observances not made with intent to lower such person in the estimation of his community should not be gagged. No doubt the present Bill refers only to cases where the words either spoken or written have deliberate intention to outrage the religious beliefs and feelings of any community. But I fear, Sir, that it would be very very difficult for any person to prove or disprove success-

fully that any one spoke or wrote the words with or without such intention. A mere cursory reading of the ingredients of the would-be offence brings into prominence the intrusion which the prosecutor and the judge will have to make into the realms of psychology.

Sir, I believe the sort of writings which every sane man will condemn will come under the present criminal laws, because such writings, unless they bring in or excite communal hatred, should not be punishable. No case has arisen for adding to the list of repressive measures. Sir, some of the agitators went to the length of demanding the resignation of an Honourable Judge. That well-known and single decision may, for aught I know, be pronounced to be an erroneous view of the law. In fact, there has been another view of the law in another case. But to ignore the healing effects of time, and to raise a clamour, is zeal running amuck. Fanaticism could go no further. The present day communalism certainly demands strong measures in action but not in new laws. Sir, I regret that the Bill has been brought at this juncture, as I believe that, instead of allaying the feelings of the various communities, it will promote more ill-feeling and fanaticism. The present situation demands above everything else a broader outlook on men and things so that the mean and the scurrilous may find its proper level in the gutter, a philosophic and sympathetic goodwill so that the evil-minded and the rancorous may have to hide their faces in the light of higher nature, and an appeal to the highest culture and highest traditions of the people, so that narrow and selfish interests may be difficult to propagate. If the Legislature of a country forgets these obvious truths, and expects by legislation to guide and lead the religious beliefs and feelings in right channels, I regret that its ambition is too high and I, as a member thereof, must confess that our intrusion will only excite the pity of men of thought of the world.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, I am sorry that on this occasion I will have to differ from my Honourable friend Seth Govind Das. My Honourable friend who opposed this motion contended that there was no necessity for this legislation. But, Sir, I feel that this is a position which is hardly tenable in the face of undeniable facts, in the face of events which have transpired so recently and which have so much threatened to disturb the peace and tranquillity of this country, ever since that remarkable judgment was delivered by Justice Dalip Singh. Sir, until the Government notified their intention of modifying the law, not a day was allowed to pass on which protests were not heard in some part of the country. From the press, pulpit and platform, emphatic protests were sounded, crying against the unsatisfactory state of the present law. To cast unmerited abuse, to burst into anathemas and vilifications, to utter scandals against personages held in such high esteem by multitudes of their followers and yet go scot-free, such was revealed to be the unhappy condition of our law. There was in consequence a demand from all quarters that this defect should be at once remedied. Therefore, Sir, it is a travesty of facts to say that there is no necessity for the enactment of such a law as that before us to-day.

Now, Sir, my Honourable friend Seth Govind Das has remarked that this law was unnecessary, because those avatars and prophets did not stand in need of any protection from the law. Well, Sir, that is a very curious argument, and



[Saiyed Mohamed Padshah.]

I feel constrained to meet it in the same vein in which it has been advanced. I admit that these avatars and prophets are above all calumny. I admit that they do not stand in the least necessity of protection from the law. But, Sir, surely that is just the reason why such a law should be enacted, for it is obvious that if these avatars and prophets could in any way have been affected by such calumny, then the matter would have been one which would have concerned only themselves, and their followers could very well have rested content. But, Sir, since this is not the case, since those avatars and prophets are above all such vilifications, it is the people who believe in those avatars and prophets and who have such high esteem and regard for them who feel injured and who consequently are anxious that such a thing should not go unpunished, and there should be no loophole left to people to indulge in such undesirable vilifications. It was remarked by the Honourable Member who spoke last that it would have been better that such things should, if at all, be dealt with under the existing law of this country. I admit, Sir, that I am also of the same opinion, but we would be living in a fool's paradise if we could believe that such a thing would be possible in the future. Ever since that famous judgment, to which I have already referred, has been pronounced in the land, it looks as if the present law would not be sufficiently calculated to deal with these things; and though, Sir, I myself am of opinion that section 153-A by itself should be quite sufficient to deal with these cases,—for to me it looks as if it does not stand to reason to say that anything that can be said as amounting to an abuse of the prophets of a religion cannot necessarily be said as amounting to an insult of that religion, and that this is really a very curious piece of logic—but so long as the courts in our country are in a position to enunciate such a proposition, it is necessary that the present state of the law should be improved, and the whole thing be made more clear: and this purpose is best served by the enactment of the proposed legislation. Now, Sir, my Honourable friend, Seth Govind Das, read a long list of repressive laws with a view to making out that the proposed law was also one which could come under that category. But I ask, Sir, whether, in fairness, it could ever be contended that this proposed legislation is one which could come under that category. Can it be seriously contended that anybody has any right maliciously and deliberately to offer an insult to the religion or religious beliefs of others? Can it be contended, Sir, that to offer such insult is an innocent and legitimate act which everybody is at liberty to do as a sort of natural right? Can it be contended that to prevent and punish such an act is to restrict one's right or to curtail one's liberty? Can we conceive of any plea more unnatural than this, more ludicrous, more preposterous? Since we feel, Sir, that none of these contentions is tenable, it is obvious that we should feel bound to support the legislation which is proposed to be enacted.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab: Sikh): Sir, I have heard with great attention the speech delivered by my Honourable friend, Seth Govind Das, in opposing this measure, and I had the opportunity to hear the speeches of some of the learned Members of the Assembly the other day when this motion was under debate there. Of course my Honourable friend, the Home Secretary, has explained very fully the

grounds and the reasons which have necessitated the Government taking this action of bringing forward legislation. It has been said from the opposition side that the armoury of the laws of the country does contain a sufficient number of sections already to cope with the offence which is contemplated to be caused by religious controversies. With all respect to their opinions, I think controversy in religion has come to such a pass that it is becoming certainly very criminal. This is to be confessed with great pain, and I think it is the duty of the leaders of every community to put a proper restraint on the men who are the preachers of their religion or who are in a position through the Press of preaching their religion. The time has shown, and the circumstances have proved, that either the leaders of the communities have perhaps lost their hold, or that the preachers and the Press have become so abundant in number that they do not care for their leaders and say whatever suits their personal purpose or purse. Religions of course have been started by Prophets in this world for the purpose of giving peace in this life to humanity and solace after it, but they have to our greatest regret been misused in such a way as is causing murder, arson and other criminal actions. Of course it is to be regretted very much that religion is being so misused. My opinion is this, that, as far as I have been able to read history, religion has not in all times been the lot of all. Really a very small proportion of humanity has been able to understand religion in the right sense and to exercise it in their daily conduct. This has been apparent at every time

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and in every age in history. But unfortunately at the present time it so happens that the majority are after shadows and are leaving the realities of religion. They simply confine religion to the ritualistic part of it and entirely ignore the philosophy of religion, the essence of religion, which is the most important part to be adopted. With such a set of unfortunate circumstances, things have come to such a pass that we are required to come to Government to assist us to make such a law that nobody may be able wantonly to offer insults to religious feelings or religious beliefs of others. It has been said that there is no necessity for bringing forward any law because there are sufficient sections in the Indian Penal Code. With respect to this, Sir, I beg to say that in the Select Committee I find the names of some eminent lawyers, such as Pandit Malaviyajee, Mr. M. A. Jinnah, Mr. M. R. Jayakar and Mr. Srinivasa Iyengar, and they have given their support to the passing of this Bill. Of course it has been said that section 153-A could cover the offence which has been defined in section 295-A. With this view, Sir, I beg to differ, because I do not find that the words of section 153-A. are sufficient to cover the offence which is contemplated in this section. Apart from that, Sir, I find there are two different rulings of the same High Court on this point. The judgment delivered by the Bench of Honourable Judges of the Punjab High Court in the *Vartman* case does not refer to the judgment of the Honourable Justice Dalip Singh; it neither overrules it, nor draws any distinction between the nature of the offences discussed in the case of *Rangila Rasul* and in the *Vartman* case. In my opinion both these rulings stand as good laws and can be quoted by lawyers in subordinate courts in support of their clients. When both these rulings stand as good laws in the reports of the High Courts, there is necessity that a Bill should be passed in clearer language which would make an insult to the Prophet or to the religious beliefs or religious susceptibilities of another community a

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distinct offence. Of course, as I have said, we must confess our inability that we have not been able either so to control or restrain our Press or preachers as not to propagate hatred instead of love under the cloak of religion; and as we have failed, the necessity has arisen for such a measure being brought on the Statute-book. I agree with the idea that without the safeguards which have been tabled to be moved in this House later on, this measure might in practice prove a very drastic one, but if Honourable Members on the Government side agree that some of the amendments which are to be moved in this House are reasonable and must be put in as safeguards to this measure, I think the measure would prove useful to Indians and it ought to be placed on the Statute-book. With these few observations, I support the Bill.

THE HONOURABLE MR. H. G. HAIG: Sir, the motion before the House has received such general support from Honourable Members that it is only necessary for me to make one or two brief observations in replying. My Honourable friend Seth Govind Das did not argue that the new section in itself was a dangerous one, I think, but he was suspicious as to how the executive Government would make use of it. Well, Sir, it is very flattering to the self-esteem of the Government to find ascribed to them these attributes of omnipotence; but I feel that facts are otherwise. A section has to be interpreted, and is interpreted, by the High Courts by what it says and not on any other consideration, and if the wording of the section is satisfactory, the safeguard is complete. My Honourable friend also remarked, if I heard him aright, that it was unnecessary to provide any legislative protection for Hindu avatars. Well, Sir, I have no doubt that this is the honest opinion of my Honourable friend and I honour him for it. But I do not think he can claim that that is the general opinion of his co-religionists. The experience of Government, Sir, is that they are constantly bombarded with requests for precisely this protection, for action under the law, from various members of the Hindu community in respect of what they conceive to be insults to their religion. I need say no more, Sir, I think, in commending the motion to the House.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 2 do stand part of the Bill".

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): The amendment which I wish to move, Sir, reads as follows:

"At the end of clause 2 add the following:

*Explanation.*—It is not an offence within the meaning of this section to criticise the principles, doctrines or tenets or the observances of any religion with a view to investigate truth and improve the conditions of human society and to promote social religious reform."

THE HONOURABLE THE PRESIDENT: The Honourable Member has not read the amendment as on the paper. He has altered every "or" that

occurs in the amendment to "and". I do not know whether that is deliberate.

**THE HONOURABLE MR. G. S. KHAPARDE :** No, Sir. Probably I could not read through these spectacles which are intended for distant vision.

The reason why I move this amendment is that modern legislation, I find, is very terse, very brief, in the interests of accuracy, but to that extent it becomes difficult to be understood except by lawyers; the implications of this section will not be clear to the minds of many. After all, law is intended to be understood by all people and not to be confined to the interpretation of learned lawyers, as the presumption of law is that everybody knows the law. So, if it is to be the presumption that everybody knows the law, everybody must be at least in a position to understand what is put down there. That is the reason why I have put down this Explanation. The other reason which I believe has not yet been discussed is that this new section which is sought to be enacted is somewhere between section 499 of the Indian Penal Code which relates to defamation, and section 153 of the same Code, which relates to the setting of one set of people against another. This section comes somewhere between the two. Really speaking, offences against saints or deceased people could be brought under section 499, which is a case of defamation; it is permissible to prosecute a person for defaming dead people. Under section 153 the person is to be prosecuted not for defamation, but for setting one part of the community against another. So this section occupies something like a middle position. Those who say that this legislation was unnecessary had probably in view the fact that anybody who speaks against saints and prophets can be prosecuted under section 499, that is, defamation. Personally, I think that it is fortunate that this section is being enacted and is to be put on the Statute-book, because this middle portion appears to have given rise to a great deal of difference of opinion. The point did require to be cleared up, and I am glad it has been cleared up. But probably it will be objected by some that the point I wish to clear up in my Explanation has already been incorporated in the section and therefore there is no need for such an Explanation. My reason for doing this is, as I stated before, that, although this point is really contained in the section, it is not apparent to the mind of the ordinary reader. I want to make it apparent to everybody, more especially to that large number of journalists who are engaged in writing and who probably may not be able to catch all the implications that are involved in the brief language of the section. That is my only reason. I do not seek to modify the law as it is laid down, nor do I wish to make it lighter. All that I wish to do is to make it clear. This opinion has also been expressed in the other House and finds expression in a dissenting minute to the Select Committee's Report. That is the reason why I move this amendment.

**THE HONOURABLE MR. J. CRERAR (Home Member) :** Mr. President, before I say a few words in opposition to the Honourable Mr. Khaparde's amendment, perhaps I may be permitted to express my satisfaction in finding myself once more in my place in a House of which I had been a member for nearly four years—(Applause)—also my regret that the business in another place has prevented me from being more frequently in my place.

Now, Sir, I turn to the Honourable Mr. Khaparde's Explanation. My general and fundamental objection to it is that it is an Explanation which does

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not explain but which explains away. If this amendment were adopted, the whole Bill would become entirely inoperative. The Honourable Mr. Khaparde has said that his principal object in moving this amendment is to make it plain to the general public what the state of the law is. Now, Sir, I venture to suggest that, if any one sits down to compare closely the terms of clause 2 with the terms of the Honourable Mr. Khaparde's Explanation, his feeling would be one not of comprehension but of extreme bewilderment. The purpose, the intention and the effect of the Bill, as it stands, cannot fail to be understood by any one who honestly desires to understand it. Even the particular point raised by the Honourable Member can be met. The general intention of the Bill is perfectly clear. It can be apprehended by a man of very limited intelligence, and if there were any difficulty in interpretation, I venture to point out that its interpretation and application will not be carried out by some untutored member of the public but by an expert court of law. I would merely invite the attention of the House to what the effect of this Explanation would be, omitting some unnecessary words to make my point precise. The Explanation says :

"It is not an offence within the meaning of this section to criticise the principles . . . . . of any religion . . . . . in order to promote religious reform."

In other words, if this Explanation is given effect to, anyone could employ the most scurrilous, the most contumelious, the most insulting language if he contended and was able to show with some degree of probability that his intention was some kind of religious reform. Now, the words "to promote religious reform" are of very wide extension. They might extend to conversion from one religion to another. They might even mean the abolition or the subversion of a religion, and yet the terms of the Honourable Mr. Khaparde's Explanation, if they were added to this clause, would undoubtedly protect the man who, with that intention in his mind, resorted to the most scurrilous and abusive language. I think that, in view of these considerations, the House will not agree to this amendment.

**THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR:** I am sorry, Sir, that I have again to differ from another friend of mine, the Honourable Mr. Khaparde. Sir, as was pointed out just now by the Honourable the Home Member, this amendment is not after all quite as innocuous as the Honourable Mr. Khaparde makes it out to be. The Honourable the Home Member rightly stated that if this Explanation was inserted, it might not only explain but actually explain away the whole thing. I say, Sir, that this amendment is not only superfluous but will render perfectly nugatory the effect of the main section. It is superfluous inasmuch as the cases which need to be protected are entirely kept out of the purview of the section. The Select Committee has already made this section clear and specific, and I see that my Honourable friend Mr. Khaparde realises this point. That was the reason why he tried to justify his amendment on the ground that the law which would have such a wide application ought to be so worded that it should be clear to the layman. He further contended that not only should a lawyer be able to understand the import of this section but that any and everybody must be in a position to understand it. Here, again, I will have to repeat

what the Honourable the Home Member has already said, namely, that even in this respect the law is quite definite and specific, and that anybody who makes a really honest endeavour to understand it could easily understand its meaning.

Now, Sir, as to the other aspect of this amendment, I mean its dangerous aspect, I wish to say a few words. I feel that if this Explanation is inserted, it will not only nullify the practical effect of the main section but will also give a very great impetus to the perpetration of those very acts which it is the purpose of this new law to prevent. I feel, Sir, that if we provide this unnecessary safety valve, which is simply redundant, the result will be that we would throw wide open the floodgates of vile abuses and vituperation. Deliberate insults, malicious imputations designed wilfully will be hurled from all parts of the country, and with perfect impunity, and all because of the subterfuge offered by the ostensible excuse of fair criticism for some one of the purposes specified in the Explanation. All these persons will have to be protected, and the result will be that this Explanation which is proposed in the amendment instead of serving as a mere Explanation will provide a very convenient and dangerous exception to the main section. I feel, Sir, that my Honourable friend when he proposed this amendment did not realise the dangerous aspect of it, otherwise, I feel sure, he would not have brought forward this amendment. His object is to provide for laymen who want to make a comparative study of religions. His object is that those who indulge in fair criticism of the various religions should not be deterred by the apprehension that this law would prevent them from making even fair criticism. But my Honourable friend totally failed to realise the dangerous aspect of his amendment. Able lawyer as he is, we cannot expect him to maintain that deliberate and malicious insults are among the rights and privileges of any fair criticism. I therefore oppose the amendment.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Sir, I feel that there must be some protection for honest critics and students of research. I feel that in this section of the Bill an attempt has been made to give protection to such men, but I do not think that it is quite sufficient. It has been provided by the addition of these two words "deliberate and malicious" intention. With respect to this I beg to say that an intention is after all to be judged by the conduct of the man who is under trial, and it is not such a point as can be proved by any tangible evidence in the courts of law. In every section of this nature—that is section 295-A—I think exceptions have been provided for those who do not intentionally insult or defame any person or any religion or the religious susceptibilities of any man. We know that there are about 10 exceptions to the law of defamation. The necessity for the Explanation proposed in the amendment is on account of this reason also that in the present times I feel that religion has been very much, if I can use this word, polluted or it has become much degenerated. Whatever is preached nowadays is simply the means to that religion and the end is altogether forgotten. The greatest controversy arises not only on the philosophic portion of any religion, because I believe all the Theists generally believe in one God and the fraternity of man—they all agree in this respect with one another—but the controversy which leads to unpleasant consequences arises out of the ritualistic part of the religion on which nowadays great stress is laid, and the essence of religion is entirely forgotten and

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thrown overboard. Even nowadays I feel that in every community following a certain religion the real principles of religion are not very much inculcated and not very much followed. I, as a Sikh, am enjoined by my religious principles to believe in one God and to believe in the fraternity of humanity. If I forget generally to practise this in my daily life, I will not be able to derive good from my religion. What I have come to think or conceive of religion is to offer prayers according to what has been laid down for a Sikh and keep the outer form of Sikhism. I can say this of my community, and I think I can also say this of other communities as well. The principles of religion are brought down to the level of ritualism to a very great extent, and it is absolutely necessary that there should be a reform in this direction. If, for instance, a man whose soul is much more developed than the ordinary run of humanity in a particular community thinks that such and such a ceremony or such and such an observance is being brought forward or practised in a community, and if that man thinks that those ceremonies or observances are not consistent with the principles or the philosophy of that religion, he comes forward to bring about reform in that respect and to stop such ceremonies and observances. In doing so, he has to show to the public the dark side of those ceremonies and those observances. If he does so, the Law Department of the Government can say under the present law that he is insulting the religious feelings of other men, and he may be hauled up in a court and sentenced to two years' rigorous imprisonment. I feel, Sir, that some protection should be given to those reformers who might bring forward reforms in the direction mentioned above. The Honourable the Home Member said that, if this Explanation is put down in the Bill under clause 2, it will remove the effect of the whole law, and with regard to this I beg to propose, with your permission, the addition of a few words which will have the effect of not removing the effects of the present law. I wish to add the words :

“ provided that the language of such criticism is not offensive ”.

If this addition is acceptable to the Honourable Mover of the amendment, I would like it to be inserted in the amendment proposed by him. I hope this will serve the purpose of the Honourable the Home Member also, because if any reformer comes to make any reform in the religion or the religious observances of that religion, he might be at liberty to do so. In doing so, he should not use any language in that criticism which may be offensive to the members of that community or the members of any other community. With these few words, I wish that the Honourable Member who moved his amendment will accept this addition to his amendment, and I hope he will accept my suggestion.

THE HONOURABLE THE PRESIDENT: Further amendment moved :

“ That to the Explanation proposed in the amendment of the Honourable Mr. Khaparde the following words be added—‘ provided that the language of such criticism is not offensive ’.”

THE HONOURABLE MR. J. CRERAR: Sir, I regret very much that we are unable to accept this further addendum suggested by the Honourable Sardar Shivdev Singh Oberoi. My reply to the whole position he took up is this : that if you examine the clause carefully as it stands, the case of a man who in good faith criticises religious ritual or religious tenets but refrains from using offensive language, does not come within the danger of the Bill, for the simple

reason that in each case the prosecution has to prove a deliberate and malicious intention of outraging religious feelings and an insult to religion or religious beliefs. It seems to me that the language of the clause as it stands is far more specific, far more intelligible and far safer than that which the Honourable Sardar proposes to add, because the addition which he proposes—"provided that the language used is not offensive"—is a very vague, very ambiguous and very equivocal expression. Offensive to whom? This amendment may or may not leave it to the courts to determine whether it was offensive or not. At the best it would leave the court with what I would venture to say is an impossible task of interpretation. But it might even be held that a single member of the community concerned might appear to give evidence and say that he, at any rate, was offended by the language. In that case the person to whom the Honourable Sardar Shivdev Singh proposes to extend this particular protection would find it an exceedingly inadequate and entirely ineffective protection. My point is that we considered very carefully the language of the clause as it stands, and we considered that it was far more intelligible, far more effective and far safer for those who, with honest intentions, may possibly be regarded as having come in some remote degree within the danger of the clause.

**THE HONOURABLE THE PRESIDENT :** I think perhaps we had better get out of the way, first, the amendment proposed by the Honourable Sardar from the Punjab.

**THE HONOURABLE MR. G. S. KHAPARDE :** I am willing to accept it.

**THE HONOURABLE THE PRESIDENT :** The question is :

"That to the Explanation contained in the amendment of the Honourable Mr. G. S. Khaparde the following words be added, namely :

'provided that the language of such criticism is not offensive'."

The motion was negatived.

**THE HONOURABLE THE PRESIDENT :** The Council is now back on the Honourable Mr. Khaparde's amendment.

**THE HONOURABLE PANDIT SHYAM BIHARI MISRA :** Sir, I have the fullest sympathy with the motive underlying the amendment proposed by my Honourable friend, Mr. Khaparde. But, as was clearly pointed out by the Honourable the Home Member, this Explanation hardly protects the honest critic of religion more than the wording of the Bill itself. I have been administering the criminal law for the last thirty years practically. Sir, I have not just now consulted the Indian Penal Code; but to the best of my recollection such drastic wordings to safeguard an accused person will probably not be found in a single section of the Indian Penal Code. We generally have such words as "whoever intentionally does such and such a thing", etc. But instead of the word "intentionally" we are now going to provide in the present Bill such drastic words as "with deliberate and malicious intention." Now, Sir, what could be clearer than that? I have often been told by eminent lawyers that it is very difficult to prove intention; I say that it is extremely more difficult to prove that there is deliberate and malicious intention. Unless a writer or speaker has been extremely bitter, ntemperate and insulting in his criticism of anything religious, I think it will



[Pandit Shyam Bihari Misra.]

be very difficult for the prosecution to bring him within the four corners of this very clear and emphatic expression "with deliberate and malicious intention." So I think these words constitute a very clear safeguard for the honest critic of religion.

I have already said that I have genuine sympathy with the motive underlying my friend's amendment, but the amendment is for these reasons to my mind superfluous. Instead of safeguarding the accused, perhaps this Explanation may render the Bill itself inoperative as the Honourable the Home Member has so clearly pointed out. The words sought to be introduced by means of this Explanation may entitle a man to enter into a very scurrilous criticism of any religion and to be safeguarded in doing so by the Explanation proposed to be added, for it would not be an offence within the meaning of this Explanation to criticise the principles of a religion in any way you like—whether temperately, intemperately, bitterly or scurrilously, as you please—it is all criticism; it may be good criticism; it may be bad criticism; but it is nevertheless criticism. Therefore, to say that to criticise any religion with a view to promote social or religious reform would be a dangerous extension and a dangerous explanation to add. As the Honourable the Home Member has pointed out, the very object of the Bill would be rendered futile and the Bill would become practically inoperative. I do not think honest criticism will be punishable under the Bill as it stands.

If this Explanation had been a little more clearly expressed, it might have been possible perhaps to accept it, but there is yet another consideration which cannot be forgotten. It is necessary to enact such a measure at once. The whole House is aware of the bitter controversy that had been raging in the country as a consequence of the judgment in the *Rangila Rasul* case; that has become a notorious case, and the critics went to very extreme lengths indeed. But, at the same time, nobody can claim that they had not some justification for saying that a man who criticises a saint or a prophet or an avatar so scurrilously should be punished. Mr. Justice Dalip Singh honestly came to the conclusion that the criticism did not come within the provisions of section 153A of the Indian Penal Code; but a Bench of the same High Court in another case, the *Risala Vartaman* case, came to a different conclusion. But as pointed out by my Honourable friend, Sardar Shivdev Singh Oberoi, the two judgments are there and it is possible there may be a difference of opinion, and some courts may easily refer to the ruling of Mr. Justice Dalip Singh. I have the highest respect for the legal acumen and impartiality of Mr. Justice Dalip Singh. It would be futile for a moment to believe that he decided the case otherwise than upon what he considered to be the right interpretation of the law. But whether that interpretation of the law is right or wrong, I am not in a position to say. Therefore, it has been thought proper to make the whole law clear, so that there may not be any difference of opinion. Now, Sir, if we were to insert this Explanation at this stage, what would be the result? The result would be that this Bill would have to go back to the Legislative Assembly, but that House has already adjourned *sine die*, and therefore the Bill cannot be passed before the next Session in Delhi, and that, Sir, is extremely undesirable.

THE HONOURABLE SETH GOVIND DAS : Where is the harm ?

THE HONOURABLE PANDIT SHYAM BIHARI MISRA : It may be very good of my Honourable friend Seth Govind Das to ask where is the harm, but the harm lies in this that a man with evil motives may have a licence to abuse any prophet or avatar as much as he likes and yet may go scot free. That is the only difficulty.

My Honourable friend seems to think that this is a repressive measure ; I entirely repudiate that suggestion. For the matter of that, he said that the measure is a bad thing ; but I say it is a very good thing. If it may be contended that this Bill is a bad thing, I would say the whole of the Indian Penal Code is an evil thing, and therefore you should annul or repeal it outright ; then anybody could slap me, or commit a murder, or run away with another man's wife, or do anything else he likes, and he would not be punishable at all. I think, Sir, that would take us back to the primitive state of human society to which the Honourable the Home Secretary referred in the beginning of his speech.....

THE HONOURABLE SETH GOVIND DAS : I never said that the whole Indian Penal Code is a bundle of evil.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA : I am glad to hear that the Honourable Member did not say that. But I think, Sir, it is very essential that this Bill should be put on the Statute-book as early as possible, and it would be fatal to postpone it till the Delhi Session. I, therefore, oppose the amendment of my Honourable friend Mr. Khaparde.

THE HONOURABLE THE PRESIDENT : The original question was :

" That clause 2 do stand part of the Bill."

Since which an amendment has been moved :

" That to section 295A proposed to be inserted in the Indian Penal Code by clause 2 of the Bill the following be added :

*Explanation.*—It is not an offence within the meaning of this section to criticize the principles, doctrines or tenets or the observances of any religion with a view to investigate truth or improve the conditions of human society or to promote social or religious reform."

The question I have to put is that that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 3.

(The Honourable Mr. Khaparde did not rise in his place).

THE HONOURABLE THE PRESIDENT : Is the Honourable Mr. Khaparde not moving his amendment ?

THE HONOURABLE MR. G. S. KHAPARDE : Yes, Sir, I want to move my amendment.

THE HONOURABLE THE PRESIDENT : He is keeping the Council waiting.

THE HONOURABLE MR. G. S. KHAPARDE : The amendment that stands in my name reads thus :

" That in clause 3 of the Bill, sub-clause (ii) be omitted, and sub-clause (iii) be numbered (ii)."

[Mr. G. S. Khaparde.]

Sir, one thing I have learnt, and it is this, that in moving this amendment, I should not be very brief, and because I happened to be very brief in my previous amendment, my remarks were misunderstood and criticised on a wrong point. I am not going to speak on my previous amendment, but I shall confine myself to this amendment. In plain words, this Bill says that nobody can institute a prosecution without the sanction of the Local Government, and I say it should not be so. I say so, because from my point of view I look upon this section as more or less an explanation of that provision of the Indian Penal Code which protects persons from being defamed. As I have already dealt with that point, I shall not go further into that question. But in this particular instance it becomes necessary to go a little further. It is in this way, that when a prosecution which is sanctioned by a Local Government goes to a court, it goes there with a certain amount of prestige, with the help of the Public Prosecutor and with more or less a great deal of prejudice against the accused. The Magistrates are also afraid of giving an acquittal in a case in which the Government itself is the prosecutor. That thing, as I have found, always works to the great disadvantage of the accused.

My second ground for taking away this power is that the Government has been accused both in the public press, in the other House as also in various other places, of being partial. Of course, I do not subscribe to that view, but still that accusation has been made, and it has been illustrated to me at one time like this. Supposing your son is fighting with the son of your neighbour and then you are there. You get up and say, "Boys, boys, do not fight". But in so saying you hold the hands of your neighbour's son, you do not hold the hand of your own son who goes on beating the son of your neighbour. (Laughter.) And it was said that Government were doing something like this, and I say it is not the right thing to do. Why should Government expose itself to this sort of accusation in this manner, especially when there is so much feeling roused in the country and when people have imputed motives? What has happened is this, that in speaking of the *Rangila Rasul* case, there were some people who demanded that not only the Judge who delivered the judgment in that case should be removed, but they suggested that even the Chief Justice should be dismissed. Now, you see how Government is being accused. I am therefore anxious that the Local Government and the Government of India should not be a party to a controversy of this character. Let the people fight it out. Where is the harm? There will be more cases in the courts. All right; the Magistrates have got ample powers to dispose of frivolous prosecutions. They have got powers to award compensation to the accused; and they have got powers to dismiss cases. Why don't you allow the parties to fight the matter out between themselves? Why should Government intervene? I say so for this reason that in the debate on this case, it was suggested that this *Rangila Rasul* book was written in answer to a certain other book called the "19th Century Saint" or something of that kind. Then the question arose as to why the publisher of the "19th Century Saint" was not prosecuted and why the author who answered it was prosecuted. The reply of the Government was that, because they did not think that this book would lead to rioting, and because they thought that the publication of the book *Rangila Rasul* would lead to rioting, the publisher of this book has been prosecuted. Now, Sir, that reply

of the Government was rather funny, for this reason, that the Local Government is to be the judge; and is the judge, in holding whether a particular book will or will not lead to rioting and a breach of the peace. Then the offence is a breach of the peace. The offence has nothing to do with your defaming the Saint. Suppose there are one or two Muhammadans living in a village, and one of the men says something foolishly to another. These two people may complain, but if the Local Government thinks that there will be no danger of a breach of the public peace, they need not institute any prosecution. The case can be dropped completely if the Local Government consider that there is no danger of a breach of the public peace. I say, therefore, Sir, that this law reduces itself to a wrong principle, that is to say, it justifies what was said recently that, under British rule whoever shouts most gets most and whoever does not shout gets nothing at all. That was said by a very great person; I do not want to mention his name.

Then it comes to this, that if there is a danger of a riot breaking out, if I do something and there is a danger of people fighting, then alone the Government would interfere, not because my feelings have been hurt, but to prevent and put down the riot. That, I think, is not the right law, nor is it the intention of this Bill. The Bill intends that, when the religious feelings of a community are wounded on a particular question, the man whose feelings have been wounded should be able to bring a case and get justice, though he may be only one man in a whole town. He should be in a position to institute a prosecution and submit the case for judicial decision. It should not be that any person, the District Magistrate or perhaps on the report of the District Magistrate the Local Government may determine whether that is a case worth fighting about. It is not at all a private case then: it becomes a case which Local Governments can always institute. This law is practically nothing. So as it was said on the previous occasion, this provision practically nullifies the whole law. It puts the law in the hands of the Local Government. You may ask the Local Government to prosecute, and if the Local Government does not choose to prosecute, then whatever your feelings may be, however hurt you may be, you have got nothing to do but just submit. I looked for this point in the Report of the Select Committee and all that they have got to say against that point was that "to avoid factitious and vindictive prosecution" this power has been taken by the Government. I say the Penal Code has already given this power to settle cases of the kind to Magistrates, and if they think it necessary they can punish and award compensation. Under section 499 as it stands I can go to court and say so and so defamed my mother or my father and so on. But, as a matter of fact, do you find that there are many defamation cases brought? Not at all. Similarly, if this permission were given to people to prosecute others for wounding their religious feelings and so on, there will not be more cases than there are now. That is my idea. But there is a further thing; that if these people do bring such suits, very well, they will take the consequences; they will be fined and they will have to pay compensation, the law being that you are not permitted to speak against a saint or an avatar or a sainted person. That being the law there will be a practical understanding in this country, the country will quiet down, and all these difficulties will disappear. Therefore, I say this power of Government intervention should be removed. The third reason for it is this. I look upon these people who wound

[Mr. G. S. Khaparde.]

religious feelings not as criminals or as bad men. They are people who are generally ignorant and they get obsessed with what they are thinking of. And they imagine there is no truth beyond what little they have got in their brain. So that if they find people worshipping differently, they have narrow ideas and they resent it and that is how the quarrel arises. To my mind these are people who deserve more to be pitied than to be punished. It is our own fault that after our dominion for nearly 200 years there are so many people left ignorant and they are not able to understand and talk about religion. Furthermore, education has not educated everybody that has to be educated or brought him to a reasonable frame of mind. To that extent the responsibility belongs to the educated classes also. But the fact remains that there are these poor ignorant people, not criminal people, not bad people, but who having conceived these narrow ideas and having been brought up in these narrow ideas, resent everything that is against their preconceived notions and therefore they go about and then they talk and people call them fanatics. A fanatic is not a murderer. A fanatic may commit murder : then he is a murderer. But these fanatics are neither criminal people nor bad men.

THE HONOURABLE THE PRESIDENT : I think the Honourable Member has forgotten his amendment.

THE HONOURABLE MR. G. S. KHAPARDE : My amendment is that a prosecution should not be dependent on the good will of the Government. It should depend on the feelings which the complainant has. That is the meaning of my amendment and that I am trying to elucidate by saying that I take this view of the matter for this reason : that these fanatic people should not be considered as criminals or bad people. I think they are misguided people and the fittest candidates for the nearest lunatic asylum. They are no better than that. So one ought not to feel angry with them and magnify their offence into an attempt to cause a riot.

I therefore propose to take away this power or rather the restrictive clause by which you can institute a prosecution only on the permission or the concurrence of the Local Government. That is my reason, Sir, for moving the amendment.

THE HONOURABLE MR. J. CRERAR : Sir, I hope my Honourable and learned friend will not accuse me of any discourtesy if in my reply to his somewhat expatiating argument I am brief and restrict myself to his amendment. I congratulate the Honourable Member on the versatility of his argument. A few minutes ago he represented with all the vehemence at his command the grave dangers which we were likely to incur if we subjected the honest critic to the penalties of this law. Now, the Honourable Member has argued a totally different proposition ; in fact, a proposition diametrically opposed. After having spoken at great length in favour of the honest critic and imploring the House to extend greater protection to him, he now proposes to deprive the honest critic of what is perhaps the most effective protection extended to him in the Bill. Because it must be apparent that where animosities run high and religious feeling is inflamed, nothing is more likely to happen, if this matter is left to private initiative, than that malicious, or at any rate, ill-judged and mis-

guided prosecutions, will be brought up. If we do this, so far from applying a remedy to the evils which we have in view we shall be doing a great deal to inflame them. The Honourable Member's reply is that after all, courts and Magistrates have powers to punish frivolous or vexatious prosecutions. They can inflict a fine of Rs. 100. I do not think that precisely the kind of man whom the Honourable Mr. Khaparde has in mind, the honest critic, the man who in point of fact has not brought himself within the danger of this Act, the man who has used throughout most scrupulously temperate language—that that man should be prosecuted, should be put on his defence, exposed to the anxiety of a defence and possibly to heavy expenditure. The remedy my Honourable friend relies on is that the prosecutor should be fined a hundred rupees. I do not think, Sir, that that is adequate.

THE HONOURABLE MR. G. S. KHAPARDE: He can bring a civil suit in addition.

THE HONOURABLE MR. J. CRERAR: The truth of the matter is this, that there are two clauses of essential importance in this Bill. The first is the clause which creates the offence, the second is the clause which requires the authority of the Local Government to a prosecution. Having regard to the state of affairs with which we propose to deal, recalling the fact that our intention throughout is to allay these controversies, what the Honourable Member proposes to do is tantamount to bringing out a barrel of gunpowder and exposing it in an open place across which the sparks of a smouldering fire are already flying, and to imagine that in doing so we shall not only be fanning up the conflagration but adding the extreme danger of an explosion.

THE HONOURABLE THE PRESIDENT: The original question was:

“That clause 3 do stand part of the Bill.”

Since which an amendment has been moved:

“That sub-clause (ii) be omitted and sub-clause (iii) be numbered (ii).”

The question I have to put is that that amendment be made.

The motion was negatived.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: (Punjab: Nominated Non-Official): Sir, we are very thankful to the Government for this measure and I am very glad that it has been passed in another place. But I may say that

a mountain has laboured and it has brought forth a ridiculous mouse. After all, if the Bill is meant to be effective, it must be effective. There are many men who I know simply for their livelihood have broken the law and got into jail. They come out as great heroes (*An Honourable Member*: “Question.”) I know that when they come out they go to members of their community who, thinking they are heroes, give whatever help is needed to them. I want to give a deterrent punishment so that the man may not commit the offence again. The idea underlying my amendment is that the sentence should be severer. I read to the House the amendments that I propose:

“That in sub-clause (iii) of clause 3—

(a) for the words ‘shall not arrest without warrant’ the words ‘shall arrest without warrant’ be substituted,

[Sir Umar Hayat Khan.]

(b) the word 'warrant' where it occurs for the second time be omitted, and

(c) for the figure and word '2 years' the figure and word '7 years' be substituted."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: On a point of order Sir.

THE HONOURABLE THE PRESIDENT: Order, order. Before the Honourable Member from the Punjab proceeds any further, I should save the time of the Council by pointing out that of the three amendments which he proposes to move I should only be able to put the first to the Council. The second one proposes to omit the word "warrant" from the column in the Schedule to the Code of Criminal Procedure which must contain either the word "warrant" or the word "summons." That column indicates whether a warrant or a summons should issue, and it is impossible to leave that column blank, which the Honourable Member proposes to do by his amendment. As regards the third amendment, I may point out to him that the second Schedule to the Code of Criminal Procedure, in so far as it defines the sentences which are to be passed for any offence, merely reproduces the sentences provided by the Indian Penal Code. Therefore, if the Honourable Member wished to alter the sentence, his proper course was to propose an amendment to section 295-A. of the Indian Penal Code which has been introduced into the Indian Penal Code by clause 2 of the Bill. The House has already agreed to clause 2 standing part of the Bill, and therefore the sentence of two years now stands as part of the Indian Penal Code provided the Bill is passed. It is futile to alter the Schedule to the Criminal Procedure Code when the corresponding section of the Indian Penal Code is not changed. Therefore, will the Honourable Member confine himself to the first amendment?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Why I say that the offenders should be arrested without warrant is this. If you take, say, the frontier, a man might break the law, and by the time the warrant is issued he might be on the other side of the border and will never be caught. There is a man now in Simla whose relation killed a man of the other religion in the troubles that arose out of the *Rangila Rasul* case and this man was a surety for Rs. 2,000. This man ran away and the Rs. 2,000 were naturally forfeited. He goes about saying that this man, his relation, who has run away, has done fine work and you will find people willing to pay and lots of people are paying him. Therefore I say the offender should be caught without a warrant. Those who have done magisterial work in these days know that a warrant is nothing. A constable goes with a warrant and you give him Rs. 5. He will simply write on it that this man is not in the village and has gone. So, Sir, a case which ought to be finished in one month drags on to six or seven months. One cannot get at the offenders unless sections 87 and 88 are used, but supposing this man, who is an offender, is the son of a man still living, he would not have any land or property in his name and will run away with impunity. He would be going about all over the place and nobody would give a clue to his whereabouts. Another thing I want to say is this, though according to the Honourable President, I cannot move it. If there was a deterrent sentence, it would be more effective. If a man kills another man he is hanged, but if a man does a thing by which thousands of people are killed, you would treat him mildly....

**THE HONOURABLE PRESIDENT:** Order, order. The Honourable Member is now speaking to his third amendment which is not before the Council and is not likely to be before the Council.

**THE HONOURABLE MR. H. G. HAIG (Home Secretary):** Sir, I am afraid I must oppose this amendment. I am not sure whether my Honourable friend Sir Umar Hayat Khan has altogether appreciated the effect of it. In certain cases power is given to the police to proceed on the information that is given to them to initiate action by arresting persons without warrant. In other cases it is necessary to proceed to a Magistrate and get the orders of the Magistrate who issues either a summons or a warrant. Now, Sir, the House has just affirmed the principle and inserted a provision in this Bill that no proceeding should be taken without the sanction of the Local Government. In other words, it is clearly impossible that the police should be authorised to initiate action by arresting without warrant. The action has to be initiated by the Local Government, and if my Honourable friend consulted the Schedule to the Criminal Procedure Code, he would find that in every case in which the sanction of the Local Government is necessary before a prosecution can be instituted, this same provision is inserted and naturally inserted that the police shall not arrest without warrant, even in such a serious offence as that of waging war against the King. I therefore oppose the amendment.

**THE HONOURABLE THE PRESIDENT:** The original question was :

“That clause 3 do stand part of the Bill.”

Since which an amendment has been moved :

“That in sub-clause (iii) of clause 3—

for the words ‘shall not arrest without warrant’ the words ‘shall arrest without warrant’ be inserted.”

The question is that that amendment be made.

The motion was negatived.

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Sir, I beg to move :

“That in sub-clause (iii) of clause 3 for the words ‘Not bailable’ the word ‘Bailable’ and for the words ‘Not compoundable’ in both places where they occur, the word ‘Compoundable’ be substituted.”

By these amendments I want to mitigate to some extent the rigour of this new piece of legislation which even in the opinion of the Honourable the Mover of the Bill is almost redundant. We ought not to be hard upon people for expressing their religious opinion unless and until they are actually found guilty of the offence contemplated. Before that we ought not to be hard upon the accused and should give them every facility for a fair trial. They should also be given opportunities to apologise and for the case to be withdrawn against them upon doing so. I therefore move the amendment.

**THE HONOURABLE MR. J. CRERAR:** Sir, in rising to oppose this amendment I shall deal first with the suggestion that this offence ought to be made compoundable. I must remind the House that the reasons underlying the compoundability of offences which are contained in section 445 of the Criminal Procedure Code are limited by one very obvious and one very necessary



[Mr. J. Crerar.]

consideration. It is that the offence must be an offence which injures some particular individual and that particular individual has the right—in certain cases, absolute, in other cases, with the permission of the Court—to compound the offence. Now, Sir, I somewhat doubt whether the Honourable Member himself fully appreciates in the first instance that the amendment he proposes would inculcate the principle that a man should accept pecuniary compensation for an insult to his religion. Is that really a tenable proposition? Apart from that, is it practicable? Because the offence contemplated by the Bill is an offence in which the religion or religious beliefs of a whole class of His Majesty's subjects are affected. Are you going to allow in a case of that kind any particular individual out of the whole class affected to compound the offence? I submit, Sir, the thing is not only wrong in principle but impracticable.

As regards the question whether an offence should be bailable or non-bailable, I have two points to make. In the first place, I think it is in the highest degree probable that the vast majority of people who are likely to be guilty of an offence under this section will be of the type of scurrilous scribbler who writes from some obscure den in the bazaar and who, when the law is set in motion against him, will set himself in motion away from the law—in other words, abscond. As for the case of more responsible people who, from their character, are likely to appear to answer a charge in court,—well the answer is simply this. The courts can take full cognisance of such circumstances and on the issue of a warrant allow bail. Apart from that, the people so accused have a remedy in the Sessions and High Courts who have complete power in the matter of granting bail. In this matter something must be left to the discretion of the Courts, especially if you are prepared to leave to the Courts the greater discretion to try such cases at all.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: To save the time of the Council I would like to say a few words as regards the amendment before the House instead of dealing with my own. Sir, with regard to the question whether this offence should be made bailable or not, I think it would be extra harsh upon the people who will be made the victims of this offence not to allow them bail.

The principle of not allowing bail is this, that the accused may not abscond. With regard to this fact, I beg to say that this can be secured by taking a heavy bail, and it might be in the discretion of the Court to take a bail of Rs. 5,000, Rs. 10,000 or even Rs. 20,000 or upwards. There would be such cases, as pointed out by the Honourable the Home Member, where a man from a remote corner might publish a pamphlet and inflame feelings and he might then abscond. It is quite likely that such cases might happen, but it is not unlikely also that some persons, men of status in society, men of learning and position, might find themselves called upon to prove their innocence in court with regard to this charge of having committed an offence under this section. I beg to say also that when section 153-A prescribes the same amount of sentence as section 295 and section 295-A, and when those offences are bailable, there is no reason why this section should be made extra harsh. Apart from this, there is another ground which appeals to me. The reason why

such an offence should be made bailable is this that the cases under this section will be tried in the Sessions Court and, as I understand, the procedure of the law is that an inquiry is held by a first-class Magistrate before the accused is committed to the Sessions to take his trial. It means that there is an inquiry to be held first, which would mean some time for the accused to appear therein and to watch the prosecution evidence produced against him; and if the Magistrate thinks that it is a fit case for committal to the Sessions Court, he of course commits the accused to the Sessions Court. Sessions Judges are busy officers of Government, and the dates of trials even in murder cases, I can say as a fact, are fixed two or three months after the commitment. If two months are taken in the original court over the inquiry, and three more months are taken in the Sessions Court to complete the trial, that means five or six months during which the accused will have to remain in the lock-up for nothing, when the sentence he has to undergo, if the Judge thinks it fit to give him the full sentence would be two years, and it would mean one-fifth of the sentence extra, for which he will have to remain in the lock-up without any cause. Apart from that, a man ought to have the full opportunity and the full help of the law to prove his innocence, and the accused may want to engage lawyers to support his case, which should not be denied to him. So on these grounds, Sir, I think, that the offence should be made bailable.

**THE HONOURABLE MR. G. S. KHAPARDE :** Sir, I have got an amendment later on (No. 9), that is about the offence being made compoundable. I do not know if you, Sir, would allow me to speak now ?

**THE HONOURABLE THE PRESIDENT :** The Honourable Member may speak now.

**THE HONOURABLE MR. G. S. KHAPARDE :** Thank you, Sir. My object in making it compoundable is that this legislation is intended, as far as possible, to bring about a reconciliation also; it is not intended merely to cure all the evils by punishment; and if the offence becomes compoundable, both the accused and the complainant will feel the inconvenience of it, and it will be easier to allow the compounding to take place. That will restore good will between two individuals or between two communities or between any large number of people, and that avenue of peace and agreeable condition should not be shut out. In the case put by the Honourable the Home Member, the man is usually an insignificant man who might disappear, as pointed out by my Honourable friend, the Honourable Mr. Oberoi, but in the larger number of cases that would not occur. In the larger number of cases I am willing to take it both ways. Supposing the man complaining accepts some consideration for compounding, but the man who commits that offence is fined so much. So, there is a punishment. Supposing a community is insulted, then the community will put pressure on the complainant not to accept a compromise unless something for the benefit of the community is done. If the accused builds a mosque, or a *dharamsala* or digs a well and if the community consents to it, the accused is equally punished; and the compoundable provision will keep both parties agreeable and more likely to work together than when you carry it to the bitter end and the man is punished. I therefore support this amendment about the offence being made compoundable.

**THE HONOURABLE THE PRESIDENT:** The original question was :

“ That clause 3 do stand part of the Bill.

Since which an amendment has been moved—I had better put the amendment in two parts separately—

“ That in sub-clause (iii) of clause 3 for the words ‘ Not bailable ’ the word ‘ Bailable ’ be substituted.

The question I have to put is that that amendment be made.

The amendment was negatived.

**THE HONOURABLE THE PRESIDENT:** Further amendment moved.

“ That for the words ‘ Not compoundable ’ in both places where they occur the word ‘ Compoundable ’ be substituted.

The question I have to put is that that amendment be made.

The amendment was negatived.

**THE HONOURABLE THE PRESIDENT:** The question is :

“ That clause 3 do stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

**THE HONOURABLE THE PRESIDENT:** Clause 1. The question is :

“ That clause 1 do stand part of the Bill.”

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Sir, I beg to move :

“ That to clause 1 the following words be added :

‘ It shall remain in force for a period of three years.’ ”

Sir, we are passing no doubt through troublous times, but we all hope that it will be a passing phase in the political evolution of India and all these troubles will soon pass away. I am, therefore, asking the House to pass this measure only temporarily. If necessary, we may renew the measure from time to time. There is a precedent for doing so even in the British Parliament. The suspension of the Habeas Corpus Act takes place only from time to time. This measure also, I may venture to submit, is one of a similar nature inasmuch as it involves a serious interference with the freedom of speech of the people specially with regard to the very laudable object of social and religious reforms. Although some safeguard is being sought to be provided for excepting these objects, the offence made punishable under this Bill is one in which these very questions will frequently have to be gone into, and the line of division between what is fair and just and what is malicious will always be very difficult to determine.

Moreover, as the Honourable Mr. Haig himself admits, section 153A of the Indian Penal Code is sufficiently wide to deal with such cases ; that is a permanent provision in the Statute which may sufficiently deal with such cases in future.

I therefore move the amendment that stands in my name.

**THE HONOURABLE MR. J. CRERAR :** Sir, I shall be very brief in opposing this amendment. The greater part of the arguments which the Honourable Member has employed are directed against the principle of the Bill itself and not against the duration of the Act if the Bill becomes an Act. Limiting myself therefore to what is really before the House, that is to say, the duration of the Act if the Bill is enacted, I have this to say. In the first place, I do not agree with—in fact I very definitely dissent from—the view that the Bill proceeds merely from a certain current controversy, however important that controversy may be. It is true that that controversy has had the effect of bringing the principle of the Bill very forcibly to the attention of the public and of Government. But there is, quite above and beyond the controversy, the principle involved. Nevertheless, dealing with the point of the controversy, it is clear that it is an extremely dangerous controversy. We have not very good grounds for assuming that after the next three years conditions will be such as no longer to necessitate what we propose. It would certainly be extremely dangerous to put a term of three years upon this Bill, because the mere expiry of that period would in itself tend to revive and restimulate the controversy. Quite apart, however, from any considerations of a temporary or a circumstantial nature, what the House must really consider is the principle of the Bill. If the principle of the Bill is a sound one, then it is a principle of permanent value and validity. And I do not think that the House, if they agree, as I think they are bound to agree, that the principle is a sound and valid one, should palter with its conscience and its decision.

**THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR :** Sir, the Honourable Member who suggested that this Bill should have only a temporary application contended that the necessity of such a law was of a temporary nature, and therefore it was not necessary that this law should be made permanent. It was said that all this trouble is due to the present state of feelings between the two great communities and that it is only a temporary phase which is bound to pass away. Consequently, there will be no necessity in the future for a permanent penal law on the Statute-book. Sir, I may at once state, and I believe that my Honourable friends in this House know from the way in which I have been making my opinion public in this House, that I am one of those who in spite of the present unhappy conditions have a firm faith in Hindu-Muslim unity and believe, and believe very strongly, that all our differences are only superficial and not real and that they are bound to disappear sooner or later—I hope very probably very much sooner than later. But, Sir, I confess that all this deep-rooted faith and the strength of my belief cannot dispel the fear from my mind that fanaticism and religious bigotry would be quite likely in the future, as they are now. Thus, Sir, the necessity for this Bill is not at all of a temporary nature. We realise that this is a sort of disease to which the human mind, when it is overpowered with zeal and too much of religious fervour, is susceptible and therefore it may be that at present, when we are in these unhappy conditions, this disease has become more pronounced. But to say that with happier circumstances the disease itself will vanish is to hope for the impossible.

I see no harm and no wrong, so long as we realise that there is the possibility of such a thing occurring. We should have the remedy readily available, in cases when it is necessary. To say that the existence of the remedy

[Saiyed Mohamed Padshah.]

would go to begot the disease is not correct. I therefore oppose the amendment.

THE HONOURABLE THE PRESIDENT : The original question was :

“ That clause 1 do stand part of the Bill.

Since which an amendment has been moved :

“ That to clause 1 the following words be added :

‘ It shall remain in force for a period of three years. ’

The question I have to put is that that amendment be made.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question is :

“ That clause 1 do stand part of the Bill. ’

The motion was adopted.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. G. HAIG : Sir, this measure has been very fully considered and debated by the Council this morning in respect of its principles and its details, and I do not think it is necessary for me at this stage to repeat the considerations which are still fresh in the minds of all Honourable Members.

Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE SETH GOVIND DAS : Sir, at this late hour, I do not want to take more than a few minutes of this House which is in the habit of sitting for a very short time generally.

Now, Sir, according to my expectations all the amendments brought forward in this House have been rejected. My Honourable friend, Sardar Shivdev Singh, pointed out that without some of the amendments the Bill would be a very drastic measure. I do not know what my Honourable friend and the Honourable Members of this House who think in the way in which my Honourable friend thinks and who brought so many amendments to improve this evil measure would do now after all the amendments have been rejected.

Well, Sir, this I leave to them. During the debate on this Bill some Honourable Members pointed out that this Bill is in fact the outcome of the *Rangila Rasul* case. If that is so, I say this is a still more dangerous and mischievous measure. If on any and every judgment of a controversial nature, such Bills are to be introduced, I certainly think that it is not the right way to deal with the question. When I say so, Sir, let me not be misunderstood. I am in no way supporting what is written in *Rangila Rasul*. I am against all those who accuse any Prophet. In that respect, I shall ever remain opposed to any accusations made by a Hindu against the Muhammadans or their Prophets, or by a Muhammadan against Hindus and their avatars. My Honourable friend Mr. Haig said that when I said that the Hindu avatars did not require protection, perhaps I did not give very cogent reasons for the position I took up, and that perhaps I did not voice the feelings of my co-religionists. In this respect what I have to say is this that there were several pamphlets of the same nature or even worse than the *Rangila Rasul* against the Hindu avatars. These pamphlets were published against the Hindu

avatars much before the publication of *Rangila Rasul*. But, Sir, I am proud to say that none of my co-religionists had ever agitated in this respect nor did they press for the enactment of any measure such as the present one.

Then, Sir, the whole question is whether the present Bill is going to meet the present situation. Hindu and Muslim quarrels were unfortunately going on before the publication of *Rangila Rasul* though during the non-co-operation time we did not even hear about such quarrels.

The whole question, Sir, as has been rightly pointed out by my Honourable friend, Mr. Haig, is a change of heart; and let me point out that this Bill is not going to bring about that change of heart which is wanted for the improvement of this deplorable situation. When, Sir, as my Honourable friend Mr. Haig himself has pointed out, this Bill is not going to improve the situation and when it is going to give more powers clearly in the hands of an alien Government, I cannot, Sir, in any case support the Bill and I oppose the motion of the Honourable Mr. Haig.

THE HONOURABLE THE PRESIDENT : The question is :

“That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

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The Council then adjourned *sine die*.

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